

1 Andrew I. Silfen (*pro hac vice*)  
2 Beth M. Brownstein (*pro hac vice*)  
3 **ARENT FOX LLP**  
4 1301 Avenue of the Americas, 42nd Floor  
5 New York, New York 10019  
6 Telephone: (212) 484-3900  
7 Facsimile: (212) 484-3990  
8 Email: andrew.silfen@arentfox.com  
9 beth.brownstein@arentfox.com

6 Aram Ordubegian (SBN 185142)  
7 **ARENT FOX LLP**  
8 55 Second Street, 21st Floor  
9 San Francisco, CA 94105  
10 Telephone: (415) 757-5500  
11 Facsimile: (415) 757-5501  
12 Email: aram.ordubegian@arentfox.com

10 *Counsel for BOKF, NA, solely in its capacity as*  
11 *Indenture Trustee for the Utility Senior Notes*

11 Dennis F. Dunne (*admitted pro hac vice*)  
12 Samuel A. Khalil (*admitted pro hac vice*)  
13 **MILBANK LLP**  
14 55 Hudson Yards  
15 New York, New York 10001-2163  
16 Telephone: (212) 530-5000  
17 Facsimile: (212) 530-5219

15 *and*

16 Gregory A. Bray (SBN 115367)  
17 Thomas R. Kreller (SBN 161922)  
18 **MILBANK LLP**  
19 209 Century Park East, 33rd Floor  
20 Los Angeles, CA 90067  
21 Telephone: (424) 386-4000  
22 Facsimile: (213) 629-5063

21 *Counsel for the Official Committee*  
22 *of Unsecured Creditors*

Michael S. Stamer (*admitted pro hac vice*)  
Ira S. Dizengoff (*admitted pro hac vice*)  
David H. Botter (*admitted pro hac vice*)  
Abid Qureshi (*admitted pro hac vice*)  
**AKIN GUMP STRAUSS HAUER & FELD LLP**  
One Bryant Park  
New York, New York 10036  
Telephone: (212) 872-1000  
Facsimile: (212) 872-1002

*and*

Ashley Vinson Crawford (SBN 257246)  
**AKIN GUMP STRAUSS HAUER & FELD LLP**  
580 California Street  
Suite 1500  
San Francisco, CA 94104  
Telephone: (415) 765-9500  
Facsimile: (415) 765-9501

*Counsel for the Ad Hoc Committee of Senior*  
*Unsecured Noteholders of Pacific Gas and*  
*Electric Company*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

In re:

**PG&E CORPORATION,**

**- and -**

**PACIFIC GAS AND ELECTRIC  
COMPANY,**

**Debtors.**

☐ Affects PG&E Corporation  
☐ Affects Pacific Gas and Electric  
Company

☒ Affects both Debtors

*\* All papers shall be filed in the Lead  
Case, No. 19-30088 (DM).*

Case No. 19-30088 (DM)

Chapter 11

(Lead Case)

(Jointly Administered)

**CONSOLIDATED OPENING BRIEF OF  
CERTAIN CREDITOR GROUPS AND  
REPRESENTATIVES REGARDING THE  
ENTITLEMENT OF HOLDERS OF  
UTILITY FUNDED DEBT CLAIMS TO  
OPTIONAL EARLY REDEMPTION,  
MAKE-WHOLE, OR SIMILAR AMOUNTS  
IN A SOLVENT DEBTOR CASE**

**Hearing**

Date: January 14, 2020

Time: 10:00 a.m. (Pacific Time)

Place: United States Bankruptcy Court  
Courtroom 17

450 Golden Gate Ave, 16<sup>th</sup> Floor  
San Francisco, CA 94102

# TABLE OF CONTENTS

	Page
PRELIMINARY STATEMENT.....	2
BACKGROUND .....	3
I. Debtors' Wildfire Litigation Exposure Leads to Bankruptcy Filing .....	3
II. The Senior Notes.....	4
A. Certain Terms Are Common to All Senior Notes.....	5
B. The Optional Redemption Provisions Vary Across Senior Notes .....	6
1. The Fixed Date Optional Redemption Provisions .....	6
2. The Any Time Optional Redemption Provisions.....	8
3. The 2034 Notes Optional Redemption Provision .....	9
III. Treatment of the Senior Notes in the Proposed Plans.....	9
ARGUMENT .....	10
I. The Noteholders Are Entitled to Optional Redemption Premiums, Under Applicable Non-Bankruptcy Law, If the Debtors Elect to Discharge the Senior Notes Pursuant to the Debtor Plan .....	12
A. The Debtors' Choice to Satisfy the Senior Notes Pursuant to the Debtor Plan is "Optional." .....	12
B. The Debtors' Choice to Satisfy the Senior Notes Under the Debtor Plan Constitutes a "Redemption" Entitling Noteholders to the Optional Redemption Premium .....	15
1. The Proposed Plans' Treatment of the Senior Notes Constitutes a "Redemption" Under The Note Documents' Plain Terms.....	15
a. Fixed Date Notes.....	17
b. Any Time Notes .....	17
c. 2034 Notes .....	18
2. Redemption Can Occur After a Bankruptcy-Induced Acceleration as a Matter of Law.....	20
3. The Second Circuit's <i>Momentive</i> Decision Does Not Counsel a Contrary Result .....	24
II. The Optional Redemption Premiums Are Not Disallowed by the Bankruptcy Code.....	26
A. The Optional Redemption Premiums Are "Charges," or "Liquidated Damages," Not "Interest.".....	27
B. The Optional Redemption Premiums Are Fully Matured, and Cannot Constitute "Unmatured" Interest.....	28
C. The Solvent Debtors Must Honor the Note Documents In Any Event.....	29
STATEMENT OF CREDITORS' COMMITTEE.....	31
CONCLUSION .....	31

## TABLE OF AUTHORITIES

Page(s)

### Cases

<i>In re 1141 Realty Owner LLC,</i> 598 B.R. 534 (Bankr. S.D.N.Y. 2019).....	25, 27
<i>In re 360 Inns, Ltd.,</i> 76 B.R. 573 (Bankr. N.D. Tex. 1987).....	29
<i>In re 433 S. Beverly Drive,</i> 117 B.R. 563 (Bankr. C.D. Cal. 1990).....	13, 27, 28
<i>In re AMR Corp.,</i> 730 F.3d 88 (2d Cir. 2013).....	26
<i>Balsam v. Tucows Inc.,</i> 627 F.3d 1158 (9th Cir. 2010).....	23
<i>Carman v. Alvord,</i> 644 P.2d 192 (Cal. 1982) .....	20
<i>In re Chemtura Corp.,</i> 439 B.R. 561 (Bankr. S.D.N.Y. 2010).....	<i>passim</i>
<i>Chesapeake Energy Corp. v. Bank of N.Y. Mellon Tr. Co.,</i> 773 F.3d 110 (2d Cir. 2014).....	16
<i>In re Chicago, Milwaukee, St. Paul &amp; Pac. R.R. Co.,</i> 791 F.2d 524 (7th Cir. 1986).....	14, 30
<i>Compagnie Financiere de CIC et de L'Union Europeenne v. Merrill Lynch,</i> <i>Pierce, Fenner &amp; Smith Inc.,</i> 232 F.3d 153 (2d Cir. 2000).....	16
<i>Crosby v. HLC Properties, Ltd.,</i> 167 Cal. Rptr. 3d 354 (Cal. App. 2014).....	18
<i>Debentureholders Protective Comm. of Cont'l Inv. Corp. v. Cont'l Inv. Corp.,</i> 679 F.2d 264 (1st Cir. 1982).....	30
<i>In re Dow Corning Corp.,</i> 244 B.R. 678 (Bankr. E.D. Mich. 1999) .....	15
<i>In re Dow Corning Corp.,</i> 456 F.3d 668 (6th Cir. 2006).....	14, 30

1	<i>In re Energy Future Holdings Corp.</i> ,	
2	842 F.3d 247 (3d Cir. 2016).....	<i>passim</i>
3	<i>Fed. Nat. Mortg. Ass'n v. Miller</i> ,	
4	473 N.Y.S.2d 743 (N.Y. Sup. Ct. 1984) .....	20
5	<i>Felin v. Kyle</i> ,	
6	102 F.2d 349 (3d Cir. 1939).....	16
7	<i>Gen. Elec. Capital Corp. v. Future Media Prods., Inc.</i> , 547 F.3d 956 (9th Cir.	
8	2008) .....	13
9	<i>Heine v. Signal Cos.</i> ,	
10	No. 74 Civ. 3036, 1977 WL 930 (S.D.N.Y. Mar. 4, 1977).....	16
11	<i>In re Imperial Coronado Partners, Ltd.</i> ,	
12	96 B.R. 997 (B.A.P. 9th Cir. 1989).....	<i>passim</i>
13	<i>Johnson v. Norris</i> ,	
14	190 F. 459 (5th Cir. 1911).....	30
15	<i>L&amp;J Anaheim Assocs. v. Kawasaki Leasing Int'l, Inc.</i> ,	
16	995 F.2d 940 (9th Cir 1993).....	2
17	<i>In re Lappin Elec. Co., Inc.</i> ,	
18	245 B.R. 326 (Bankr. E.D. Wis. 2000) .....	27, 28
19	<i>In re Los Angeles Dodgers LLC</i> ,	
20	465 B.R. 18 (D. Del. 2011) .....	14, 30
21	<i>Matter of MPM Silicones, L.L.C.</i> ,	
22	874 F.3d 787 (2d Cir. 2017).....	24, 25, 26
23	<i>In re MPM Silicones, LLC</i> ,	
24	No. 14-22503-RDD, 2014 WL 4436335 (Bankr. S.D.N.Y. Sept. 9, 2014) .....	25
25	<i>NML Capital v. Republic of Arg.</i> ,	
26	952 N.E.2d 482 (N.Y. 2011) .....	21, 22, 23
27	<i>Nw. Mut. Life Ins. Co. v. Uniondale Realty Assocs.</i> ,	
28	816 N.Y.S.2d 831 (N. Y. Sup. Ct. 2006) .....	25
	<i>Olin Corp. v. Am. Home Assurance Co.</i> ,	
	704 F.3d 89 (2d Cir. 2012).....	16
	<i>In re Outdoor Sports Headquarters</i> ,	
	161 B.R. 414 (Bankr. S.D. Ohio 1993).....	29
	<i>Perez-Encinas v. AmerUs Life Ins. Co.</i> ,	
	468 F. Supp. 2d 1127 (N.D. Cal. 2006) .....	16

1	<i>In re Planvest,</i>	
2	94 B.R. 644 (Bankr. D. Ariz. 1988).....	28
3	<i>In re Premier Entm't Biloxi LLC,</i>	
4	445 B.R. 582 (Bankr. S.D. Miss. 2010).....	11, 24
5	<i>Quadrant Structured v. Vertin,</i>	
6	16 N.E. 3d 1165 (N.Y. 2014).....	16
7	<i>In re Read-Rite Corp.,</i>	
8	No. 03-43576 RN7, 2005 WL 2210659 (Bankr. N.D. Cal. Aug. 11, 2005).....	27
9	<i>Ridgley v. Topa Thrift &amp; Loan Ass'n,</i>	
10	17 Cal. 4th 970 (1998) .....	12
11	<i>Roden v. AmerisourceBergen Corp.,</i>	
12	113 Cal. Rptr. 3d 20 (Cal. Ct. App. 2010) .....	18
13	<i>Ruskin v. Griffiths,</i>	
14	269 F.2d 827 (2d Cir. 1959).....	29
15	<i>In re S. Side House, LLC,</i>	
16	451 B.R. 248 (Bankr. E.D.N.Y. 2011).....	12
17	<i>In re School Specialty, Inc.,</i>	
18	No. 13-10125, 2013 Bankr. LEXIS 1897 (Bankr. D. Del. Apr. 22, 2013).....	28
19	<i>SDC/Pullman Partners v. Tolo Inc.,</i>	
20	70 Cal. Rptr. 2d 62 (Cal. Ct. App. 1997) .....	18
21	<i>In re Skyler Ridge,</i>	
22	80 B.R. 500 (Bankr. C.D. Cal. 1987).....	21, 28
23	<i>Travelers Cas. &amp; Sur. Co. of Am. v. Pac. Gas &amp; Elec. Co.,</i>	
24	549 U.S. 443 (2007).....	11
25	<i>Treasurer of N.J. v. U.S. Dep't of Treasury,</i>	
26	684 F.3d 382 (3d Cir. 2012).....	20
27	<i>In re Trico Marine Servs., Inc.,</i>	
28	450 B.R. 474 (Bankr. D. Del. 2011) .....	27, 28
	<i>U.S. Bank Nat. Ass'n v. S. Side House, LLC,</i>	
	No. 11-CV-4135 ARR, 2012 WL 273119 (E.D.N.Y. Jan. 30, 2012) .....	10
	<i>Ultra Petroleum Corp. v. Ad Hoc Comm. of Unsecured Creditors of Ultra Res.,</i>	
	<i>Inc. (In re Ultra Petroleum Corp.),</i>	
	913 F.3d 533 (5th Cir. 2019).....	27

1	<i>Ultra Petroleum Corp. v. Ad Hoc Comm. of Unsecured Creditors of Ultra Res.,</i>	
2	<i>Inc. (In re Ultra Petroleum Corp.),</i>	
	No. 17-20793, 2019 WL 6318074 (5th Cir. Nov. 26, 2019) .....	27, 28
3	<i>UPS Capital Bus. Credit v. Gencarelli (In re Gencarelli),</i>	
4	501 F.3d 1 (1st Cir. 2007) .....	30
5	<i>In re Vanderveer Estates Holdings, Inc.,</i>	
6	283 B.R. 122 (Bankr. E.D.N.Y. 2002) .....	12
7	<i>Wells Fargo Bank, N.A. v. Cabazon Band of Mission Indians,</i>	
	No. E060447, 2016 WL 3438920 (Cal. Ct. App. June 15, 2016) .....	4, 12, 16
8	<i>Wilmington Sav. Fund Soc., FSB v. Cash America Int'l, Inc.,</i>	
9	No. 15-cv-5027 (JMF), 2016 WL 5092594 (S.D.N.Y. Sept. 19, 2016) .....	25
10	<b>Statutes</b>	
11	11 U.S.C. § 363 .....	13
12	11 U.S.C. § 502(b)(2) .....	3, 27, 28, 29
13	11 U.S.C. § 506(b) .....	27
14	11 U.S.C. § 1121(d)(1) .....	9
15	11 U.S.C. § 1124(2) .....	13, 14
16	Cal. Civ. Code § 1636 .....	16
17	Civ. Code § 1638 .....	18
18	Cal. Civ. Code § 1639 .....	16
19	Cal. Civ. Code § 1641 .....	18
20	Cal. Civ. Code § 1644 .....	16
21	Civ. Code § 1653 .....	18
22		
23		
24		
25		
26		
27		
28		

1 BOKF, NA (“BOKF”), solely in its capacity as successor indenture trustee under the  
2 Indentures dated as of (i) April 22, 2005 Supplementing, Amending and Restating the Indenture  
3 of Mortgage Dated March 11, 2004; (ii) November 29, 2017 and (iii) August 6, 2018, each as  
4 supplemented or amended, pursuant to which Pacific Gas and Electric Company (the “Utility”)  
5 issued the senior notes (the “Senior Notes”) to investors (the “Noteholders”), by and through its  
6 counsel, Arent Fox LLP, and the Ad Hoc Committee of Senior Unsecured Noteholders of Pacific  
7 Gas and Electric Company (the “AHC”), by and through its counsel Akin Gump Strauss Hauer &  
8 Feld LLP, hereby submit this Brief pursuant to the Court’s October 31, 2019 Order [Docket No.  
9 4540] (the “Scheduling Order”) in which the Court ordered briefing on certain discrete, threshold  
10 legal issues, with the potential to impact creditors’ rights and generate appellate activity, prior to  
11 confirmation proceedings. In particular, the Debtors’ proposed chapter 11 plan treats the  
12 Noteholders’ claims as “unimpaired,” despite the fact that it proposes to pay the Noteholders cash  
13 in “full and final satisfaction, settlement, release and discharge” of the Senior Notes *without*  
14 including the optional early redemption premiums owed to the Noteholders under the terms of the  
15 applicable documents governing the Senior Notes.

16 This brief is intended to address only the discrete issue of optional early redemption  
17 premiums. Acknowledging the importance of this threshold issue, the parties and the Court  
18 agreed to forgo formal adversary proceedings and brief it in advance of plan confirmation to  
19 facilitate its early resolution. Through this brief, BOKF and the AHC respectfully move for an  
20 order declaring that (i) the Noteholders are entitled to Optional Redemption Premiums (as defined  
21 below) if the Senior Notes are satisfied (without reinstatement) and/or cancelled, and (ii) should  
22 any plan proponent propose to satisfy principal and interest due on the Senior Notes without  
23 paying the Noteholders the Optional Redemption Premiums, the Noteholders will be impaired  
24 and entitled to vote to accept or reject the applicable chapter 11 plan. This brief is submitted  
25 pursuant to the Scheduling Order, and should not be construed to set forth BOKF’s or the AHC’s  
26 position on any matter other than the Optional Redemption Premium issue, as ordered by the  
27 Court.

28 The Official Committee of Unsecured Creditors appointed in these chapter 11 cases (the



1 “Creditors’ Committee”) is a party to this brief solely with respect to the Creditors’ Committee’s  
2 Reservation of Rights and Statement set forth below (the “UCC Statement”).

3 **PRELIMINARY STATEMENT**<sup>1</sup>

4 The Utility filed for chapter 11 protection to address tort claims based on the Utility’s  
5 alleged culpability in connection with the Wildfires that ripped through Northern California in  
6 2015, 2017, and 2018. At issue here are the Utility’s obligations to pay contractually-owed  
7 optional early redemption premiums due under the plain terms of three Indentures and their  
8 Supplements should the Utility decide to redeem \$17.525 billion in Senior Notes it issued over  
9 the past ten years, some even *following* the 2017 Fires.

10 The Utility and its parent company, HoldCo, are solvent debtors for purposes of this brief.  
11 As such, the Debtors are presumed able to satisfy their debts, including paying the Noteholders  
12 in full, inclusive of the contractual Optional Redemption Premium. Alternatively, the Debtors are  
13 free to reinstate the Senior Notes and continue to honor their contractual obligations to pay the  
14 Noteholders principal and interest. Either of the two options available to the Debtors would leave  
15 intact the Noteholders’ legal and contractual rights, which is the touchstone of unimpairment. But  
16 if the Debtors seek to alter those rights, they cannot take the position that no impairment results.<sup>2</sup>  
17 The plain language of the Indentures and related instruments contractually requires the payment  
18 of the Optional Redemption Premium under the circumstances here, and the Debtors’ proposal to  
19 redeem the Senior Notes *without* the Optional Redemption Premium impairs the Noteholders’  
20 claims.

21 Optional redemption premiums must be paid in chapter 11 unless (1) state law and the  
22 language of the applicable documents specifies a different result, or (2) the Bankruptcy Code  
23 otherwise disallows such claims. The applicable state law governing the Indentures—New York  
24 and California—and fundamental rules of contract interpretation demonstrate that the Optional

25 \_\_\_\_\_  
26 <sup>1</sup> Capitalized terms in this Preliminary Statement have the meanings given below.

27 <sup>2</sup> “Congress define[d] impairment in the broadest possible terms,” such that “any alteration of rights constitutes  
28 impairment.” *L&J Anaheim Assocs. v. Kawasaki Leasing Int’l, Inc.*, 995 F.2d 940, 942 (9th Cir 1993) (internal citation  
and quotation omitted); *see also* Consol. Opening Br. of the Official Comm. of Unsecured Creditors & Other Creditor  
Groups & Representatives Regarding the Appropriate Postpetition Interest Rate Payable on Unsecured Claims in a  
Solvent Debtor Case [Docket No. 4634] ¶¶ 13–21.

1 Redemption Premiums would be due and owing if the Debtors elect to satisfy the Senior Notes  
2 prior to the schedules specified in the applicable Note Documents. Under the Note Documents,  
3 these payments are due if the Debtors (1) voluntarily (2) redeem the Senior Notes prior to the  
4 dates specified therein, including stated maturity.

5 Both elements are satisfied here. First, there can be no question that, as a matter of law,  
6 the Debtors, who voluntarily chose (i) to file for chapter 11 bankruptcy protection despite claiming  
7 to be solvent, (ii) not to reinstate the Senior Notes, and (iii) to propose a plan that prepays the  
8 Senior Notes, are acting “voluntarily.” The Utility is not, by virtue of the bankruptcy filing,  
9 required to redeem the Senior Notes. Its proposal to do so is “optional.”

10 Second, the Debtors’ proposed action would constitute a “redemption” under the Note  
11 Documents. A redemption occurs when a company pays off its debts before the relevant stated  
12 maturity dates. This can, as a matter of law, occur before, on, *or after*, a bankruptcy-triggered  
13 acceleration. That interpretation is reflected in the Note Documents’ Optional Redemption  
14 Provisions. Though the specific language of these provisions varies somewhat, they uniformly  
15 provide that an Optional Redemption Premium is due if the Utility elects to satisfy the Senior  
16 Notes, in full or in part, prior to either the fixed dates specified in the Indentures or the Indentures’  
17 defined stated maturity dates.

18 Nothing in the Bankruptcy Code disallows the Optional Redemption Premiums. Such  
19 premiums are not “unmatured interest,” disallowed under 11 U.S.C. § 502(b)(2), but are rather  
20 charges or liquidated damages. Cases in the Ninth Circuit have repeatedly recognized the validity  
21 of optional redemption premiums in chapter 11. Accordingly, because the Optional Redemption  
22 Provisions are recognized by state law, and because the Bankruptcy Code does not disallow them,  
23 as recognized by the Ninth Circuit, the Noteholders are entitled to Optional Redemption  
24 Premiums should the Debtors satisfy the Senior Notes during these bankruptcy cases.

## 25 **BACKGROUND**

### 26 **I. DEBTORS’ WILDFIRE LITIGATION EXPOSURE LEADS TO BANKRUPTCY** 27 **FILING.**

28 The Utility is one of the largest combined natural gas and electric energy companies in the

1 United States. Based in San Francisco, the Utility is a subsidiary of PG&E Corporation  
2 (“HoldCo” and, together with the Utility, the “Debtors”). The Utility’s power infrastructure is  
3 alleged to have caused or been a contributing factor in the catastrophic wildfires in Northern  
4 California in 2015 (the “Butte Fire”), 2017 (the “2017 Fires”) and 2018 (the “Camp Fire” and,  
5 collectively, the “Wildfires”). The Wildfires and related litigation have left the Debtors with a  
6 potential liability in excess of \$30 billion. *See Decl. of Jason P. Wells in Supp. of First Day*  
7 *Motions and Related Relief* [Docket No. 28] pp. 11-16. Accordingly, on January 29, 2019 (the  
8 “Petition Date”), the Utility and HoldCo filed voluntary petitions for relief under chapter 11 of  
9 title 11 of the United States Code (as amended, the “Bankruptcy Code”).

## 10 **II. The Senior Notes**

11 The Utility issued Senior Notes before, during, and after the Wildfires with an aggregate  
12 principal balance of \$17.525 billion. There are 29 series of Senior Notes outstanding, issued by  
13 the Utility under three indentures and their supplements.<sup>3</sup> New York law governs the 2017 and  
14

---

15 <sup>3</sup> The applicable indentures are: (1) the *Indenture Dated as of April 22, 2005 Supplementing, Amending and Restating*  
16 *the Indenture of Mortgage, dated as of March 11, 2004, as supplemented by a First Supplemental Indenture, dated as*  
17 *of March 23, 2004, and a Second Supplemental Indenture, dated as of April 12, 2004* (as amended or supplemented,  
18 the “2005 Indenture”), attached as Exhibit A to the *Declaration of Andrew I. Silfen in Support of the Consolidated*  
19 *Opening Brief of Certain Creditor Groups and Representatives Regarding the Entitlement of Holders of Utility*  
20 *Funded Debt Claims to Optional Early Redemption, Make-Whole, or Similar Amounts in a Solvent Debtor Case* (the  
21 “Silfen Decl.”); (2) the *Indenture Dated as of November 29, 2017 between Pacific Gas and Electric Company, Issuer*  
22 *and the Bank of New York Mellon Trust Company, N.A., Trustee* (as amended or supplemented, the “2017 Indenture”),  
23 *Silfen Decl. Exhibit B*; and (3) the *Indenture Dated as of August 6, 2018 between Pacific Gas and Electric Company,*  
24 *Issuer and the Bank of New York Mellon Trust Company, N.A., Trustee*, *Silfen Decl. Exhibit C* (as amended or  
25 supplemented, the “2018 Indenture”, together with the 2005 Indenture and the 2017 Indenture, the “Indentures”).

26 The Senior Notes can be broken down into three categories:

- 27 1. The “2005 Notes,” comprised of (i) the 6.05% Senior Notes due 2034 (the “2034 Notes”), issued under the  
28 2005 Indenture’s predecessor document, continued by the 2005 Indenture, and are subject to the 2005  
Indenture as if issued thereunder; and (ii) twenty-four (24) series issued under Supplements to the 2005  
Indenture (collectively, the “Supp. 2005 Indentures” and individually, the “1st Supp. Indenture,” “3rd Supp.  
29 Indenture”; etc. ). The Supp. Indentures are attached to the Silfen Decl. as Exhibits A-1 – A-29.
- 30 2. The “2017 Notes,” comprised of the 3.30% Senior Notes due 2027 and the 3.95% Senior Notes due 2047,  
issued pursuant to the 2017 Indenture.
- 31 3. The “2019 Notes,” comprised of the 4.25% Senior Notes due 2023 and the 4.65% Senior Notes due 2028,  
issued pursuant to the supplement to the 2018 Indenture (the “Supp. 2018 Indenture” and, together with the  
32 Supp. 2005 Indentures, the “Supp. Indentures”). The Supp. 2018 Indenture is attached to the Silfen Decl. as  
33 Exhibit C-1.

34 Collectively, the Indentures, Supplemental Indentures and any ancillary documents and agreements are referred  
to as the “Note Documents.”

2018 Indentures; California law governs the 2005 Indenture. *See* Indentures<sup>4</sup> § 1.12. BOKF is the successor trustee under the Note Documents.

**A. Certain Terms Are Common to All Senior Notes.**

Although the interest rates, stated maturity dates, and other terms may vary from series to series, certain defined terms and general provisions apply to, and are common among, all Senior Notes.<sup>5</sup>

Each of the three Indentures defines “maturity” and “stated maturity” virtually identically:

Maturity: when used with respect to any Bond, means the date on which the principal of such Bond [or an installment of principal or any sinking fund payment<sup>6</sup>] becomes due and payable as provided in such Bond or in this Indenture, whether at Stated Maturity, by declaration of acceleration, upon call for redemption or otherwise.

Stated Maturity: when used with respect to any obligation (including any Bond of any series) or any installment of principal thereof or interest thereon, means the date on which the principal of such obligation or such installment of principal or interest is stated to be due and payable (without regard to any provisions for redemption, prepayment, acceleration, purchase or extension).

Indentures § 101.

The Indentures’ “Events of Default provisions (Indentures § 9.01) and Acceleration provisions (Indentures § 9.02) are also substantively identical. Where an Event of Default has occurred and is continuing:

[T]he Trustee or the Holders of not less than thirty-three percent (33%) in aggregate principal amount of Bonds then Outstanding, considered as one class, may declare the principal amount . . . of all Bonds then Outstanding to be due and payable immediately, by a notice in writing to the Company . . . and upon such declaration such principal amount . . . together with premium, if any, and accrued interest, if any, thereon, shall become immediately due and payable; provided, however, that with respect to [a bankruptcy-

<sup>4</sup> Citations to a specific section in the Indentures (plural) herein indicates that the section cited appears in all three Indentures.

<sup>5</sup> A schedule categorizing the Senior Notes by the Indenture or Supp. Indenture under which they were issued and their specific interest rates, stated maturity dates, and certain other variable terms is attached hereto as **Exhibit 1** (the “Senior Note Schedule”).

Certain of the Senior Notes were issued pursuant to Supp. Indentures, and in those cases, to the extent the terms or provisions in the Supp. Indentures conflict with the terms or provisions in the Indentures, the language in the Supp. Indentures control. *See, e.g.*, 1st Supp. Indenture § 401.

<sup>6</sup> The bracketed portion appears in the 2005 and 2018 Indentures, but not the 2017 Indenture.

related Event of Default], the principal amount . . . of all Bonds then Outstanding shall be due and payable immediately without further action by the Trustee or Holders.

*Id.* § 9.02.

#### **B. The Optional Redemption Provisions Vary Across Senior Notes.**

The Senior Notes are subject to optional early redemption provisions (the “Optional Redemption Provisions”) that obligate the Debtors to pay a premium if they voluntarily redeem a particular series prior to the date specified in the applicable Note Document. The Optional Redemption Provision applicable to each series of Senior Notes is, generally, located in the Note Document under which that series was first issued.<sup>7</sup>

While each series has its own Optional Redemption Provision, these provisions largely follow the same structure. The Debtors may, at their option, redeem the Senior Notes at a redemption price that is equal to the greater of either (a) 100% of the principal amount of the Senior Notes in question to be redeemed, plus accrued and unpaid interest; or (b) the sum of the present values of the remaining scheduled payments of principal and interest on the Senior Notes to be redeemed, discounted to the redemption date on a semi-annual basis at the Adjusted Treasury Rate, plus accrued and unpaid interest. The premium charged to the Debtors for optionally redeeming the Senior Notes early is the amount by which (b) exceeds (a) (the “Optional Redemption Premium”).

The Optional Redemption Provisions can be broken down into three categories: (1) the Fixed Date Optional Redemption Provisions, (2) the Any Time Optional Redemption Provisions, and (3) the 2034 Notes Optional Redemption Provision (described below).

##### **1. The Fixed Date Optional Redemption Provisions**

Fixed Date Notes—the largest category of Senior Notes—contain provisions setting out a fixed date in the future (the “Fixed Date Variable”), generally three or six months prior to the

---

<sup>7</sup> The Optional Redemption Provisions for the 2017 Senior Notes, first issued directly under the 2017 Indenture, however, are not contained in the 2017 Indenture itself. Rather, they are contained in the Reverse of Senior Note included in the form of senior notes that are attached to the 2017 Indenture as Exhibit 1 to the Rule 144A/Regulation S Appendix (the “Model 2017 Senior Notes”). The terms of the Model 2017 Senior Notes are “incorporated and expressly made part of [the 2017 Indenture]” and likewise include language incorporating the corresponding Reverse of Senior Note’s contract terms. See 2017 Indenture § 3.02 & Ex. 1–15.

series' "Stated Maturity" date, where an Optional Redemption Premium is incurred if the applicable Senior Notes are optionally redeemed by the Utility. These Optional Redemption Provisions apply to the Senior Notes first issued pursuant to the 10th Supp. Indenture (dated September 15, 2010) through the most recent 2018 Senior Notes first issued in the Supp. 2018 Indenture (dated August 6, 2018) (collectively, the "Fixed Date Notes"). Fixed Date Notes account for approximately \$11.825 billion of the \$17.525 billion outstanding principal balance, and include all Short-Term Notes (defined below). Since Fixed Date Notes were issued under all three Indentures, *see* Senior Notes Schedule, New York law governs certain of the Fixed Date Notes and California law governs others.<sup>8</sup>

Subject to certain immaterial differences,<sup>9</sup> the Fixed Date Optional Redemption Provisions for these Senior Notes provide as follows:

(a) Subject to the terms and conditions of the [applicable Indenture], **at any time prior to [the Fixed Date Variable], the [applicable Senior Notes] are redeemable at the option of the Company** in whole or in part at any time at a redemption price equal to the greater of:

(i) 100% of the principal amount of the [applicable Senior Notes] to be redeemed; or

(ii) as determined by the Quotation Agent, the sum of the present values of the Remaining Scheduled Payments of principal and interest on the [applicable Senior Notes] to be redeemed (not including any portion of payments of interest accrued as of the Redemption Date)<sup>[10]</sup> discounted to the Redemption Date on a semi-annual basis at the Adjusted Treasury Rate, plus [the Basis Points Variable]<sup>[11]</sup>;

plus, in either event of the above cases, accrued and unpaid interest thereon to but not including the Redemption Date.

(b) subject to the terms and conditions of the Indenture, at any time on or after [the Fixed Date Variable], the [applicable Senior Notes] are redeemable at the option of the Company in whole or in part at

<sup>8</sup> New York law applies to those Fixed Date Notes issued under the 2017 and 2018 Indentures; California Law applies to those issued under the 2005 Indenture.

<sup>9</sup> For example, the Optional Redemption Provisions applicable to the 2018 Senior Notes replace the Fixed Date Variable with the defined terms "[2023 or 2028] Par Call Date" which are defined as July 1, 2023 and May 1, 2028.

<sup>10</sup> The Fixed Date Optional Redemption Provisions applicable to Senior Notes first issued under the 23rd Supp. 2005 Indenture (dated August 18, 2014) and later include the following additional language: ". . . as of the Redemption Date), **calculated as if the Maturity Date of [the notes in question] was [the Fixed Date Variable] (the date that is [three/six] months prior to the Maturity Date)**, discounted to the . . . ." *See, e.g.*, 23rd Supp. Indenture § 301 (emphasis added).

<sup>11</sup> The "Basis Point Variable" supplies a basis point between 15 and 40 to add to the present value of the remaining scheduled payments to calculate the Optional Redemption Premium.



100% of the principal amount of the [applicable Senior Notes] to be redeemed plus accrued and unpaid interest thereon to but not including the Redemption Date.

*See, e.g., 10th Supp. Indenture § 301 (emphasis added).*

In sum, the applicable Note Documents provide unambiguously that if the Debtors voluntarily redeem the Fixed Date Notes before the Fixed Date Variable relevant to the applicable series of Senior Notes, they will owe the Noteholders the Optional Redemption Premium.

## 2. The Any Time Optional Redemption Provisions

The Any Time Optional Redemption Provisions provide that the applicable Senior Notes are redeemable “at any time.” The Any Time Optional Redemption Provisions apply to the Senior Notes first issued pursuant to the 1st Supp. Indenture (dated March 13, 2007) through the 8th Supp. Indenture<sup>12</sup> (dated November 18, 2009) (collectively, the “Any Time Notes”). The Any Time Notes account for \$2.7 billion of the \$17.525 billion outstanding principal balance. All Any Time Notes were issued under 2005 Supp. Indentures, *see* Senior Notes Schedule, thus California law governs.

The Any Time Notes provide as follows:

Subject to the terms and conditions of the [2005 Indenture], the [notes in question] **are redeemable at the option of the Company in whole or in part at any time** at a redemption price equal to the greater of:

- (a) 100% of the principal amount of the [notes in question] to be redeemed; or
- (b) as determined by the Quotation Agent, the sum of the present values of the Remaining Scheduled Payments of principal and interest on the [applicable Senior Notes] to be redeemed (not including any portion of payments of interest accrued as of the Redemption Date) discounted to the Redemption Date on a semi-annual basis at the Adjusted Treasury Rate, plus [the Basis Points Variable];

plus, in either event of the above cases, accrued and unpaid interest thereon to but not including the Redemption Date (the “Redemption Price”). The Redemption Price shall be calculated

<sup>12</sup> The 9th Supp. Indenture does not include an Optional Redemption Provision because no Senior Notes were first issued under it. Rather, it merely reopened an offering of earlier issued Senior Notes, the 5.80% Senior Notes due March 1, 2037, first issued under the 1st Supp. Indenture. *See* 9th Supp. Indenture at art. 2.

1 assuming a 360-day year consisting of twelve 30-day months.  
2 *See, e.g.,* 1st Supp. Indenture § 301 (emphasis added).

### 3 3. The 2034 Notes Optional Redemption Provision

4 The 2034 Notes Optional Redemption Provision—which applies only to one series of  
5 Notes—replaces “are redeemable . . . at any time” with “are redeemable . . . at any time after the  
6 Initial Issuance Date and prior to Maturity[.]” 2005 Indenture § 4.03(d). This category of  
7 Optional Redemption Provisions only applies to the 2034 Notes, accounting for approximately  
8 \$3.0 billion out of the \$17.525 billion outstanding principal balance. Because the 2034 Notes  
9 were issued under the 2005 Indenture, *see* Senior Notes Schedule, California law applies.

### 10 III. Treatment of the Senior Notes in the Proposed Plans

11 On September 23, 2019, the Debtors filed their *First Amended Joint Chapter 11 Plan of*  
12 *Reorganization* [Docket No. 3966] (as amended on November 4, 2019 [Docket No. 4563], the  
13 “Debtor Plan”). Under the Debtor Plan, the Senior Notes claims are treated as “unimpaired.” The  
14 Debtors contemplate paying the Noteholders cash in “full and final satisfaction, settlement,  
15 release and discharge” of the Senior Notes; but the Debtor Plan specifically excludes from the  
16 allowed amount of the Noteholders claims “any Claim for make-whole or similar amounts.”  
17 Debtor Plan § 4.16(a). Should the Court find that the Noteholders are entitled to the Optional  
18 Redemption Premiums, however, the Debtor Plan provides that it “shall be modified in a manner  
19 to render the [Noteholders’] Claim Unimpaired.” *Id.* The Debtor Plan also proposes to cap the  
20 claims of individual wildfire victims while permitting HoldCo’s common interest claimants to  
21 retain their interests, subject to dilution, and reinstating HoldCo’s equity interests in the Utility.  
22 Debtor Plan §§ 1.124, 4.12, 4.13, 4.20, 4.26–4.27, 4.37. The Debtor Plan therefore seeks a  
23 windfall for equity holders by paying the Senior Notes early—presumably by refinancing them at  
24 lower interest rates—while evading the bargained-for Optional Redemption Premiums, estimated  
25 at \$5.8 billion if the Debtors redeem the Senior Notes on June 1, 2020.

26 On October 9, 2019, the Court entered its *Order Granting Joint Motion of the Official*  
27 *Committee of Tort Claimants and Ad Hoc Committee of Senior Unsecured Noteholders to*  
28 *Terminate the Debtors’ Exclusive Periods Pursuant to Section 1121(d)(1) of the Bankruptcy Code*



1 [Docket No. 3940] modifying the Debtors' exclusivity to file, solicit and confirm plans in these  
2 chapter 11 cases. Shortly thereafter, the Official Committee of Tort Claimants and Ad Hoc  
3 Noteholder Group filed an alternative *Joint Chapter 11 Plan of Reorganization of Official*  
4 *Committee of Tort Claimants and Ad Hoc Committee of Senior Unsecured Noteholders* [Docket  
5 No. 4257] (the "Alternative Plan" and, together with the Debtor Plan, the "Proposed Plans"). The  
6 Alternative Plan also treats the Noteholders' claims as unimpaired; but unlike the Debtor Plan, it  
7 contemplates (1) paying in full certain short-term Senior Notes with maturity dates earlier than  
8 December 31, 2022 (the "Short Term Notes"), including Optional Redemption Premiums, and  
9 (2) reinstating the Senior Notes with maturity dates after December 31, 2022, leaving all of the  
10 Noteholders' legal, equitable and contractual rights unaltered.

### 11 ARGUMENT

12 The Noteholders are entitled to Optional Redemption Premiums under the plain terms of  
13 the Note Documents in the event that the Debtors elect to redeem the Senior Notes or otherwise  
14 attempt to cancel them prior to the dates specified in the applicable Note Documents. Optional  
15 early redemption premiums, sometimes called "make-whole" premiums, safeguard the bargain  
16 struck by lenders and debtors: when debtors are permitted to repay a loan early, make-whole  
17 premiums "protect lenders' rights to the yield that was expected at the time that they made their  
18 loans." *In re Chemtura Corp.*, 439 B.R. 561, 596 (Bankr. S.D.N.Y. 2010); *see In re Energy*  
19 *Future Holdings Corp.* ("EFH"), 842 F.3d 247, 261 (3d Cir. 2016). Make-whole early redemption  
20 premiums are rooted in the "rule of perfect tender in time," which "prohibits early payment of a  
21 loan under the rationale that the 'lender or mortgage investor has the absolute right to rely upon  
22 the income stream contracted for over the life of the loan.'" *U.S. Bank Nat. Ass'n v. S. Side House,*  
23 *LLC*, No. 11-CV-4135 ARR, 2012 WL 273119 at \*4 (E.D.N.Y. Jan. 30, 2012) (quoting *Nw. Mut.*  
24 *Life Ins. Co. v. Uniondale Realty Assocs.*, 816 N.Y.S.2d 831, 835 (N. Y. Sup. Ct. 2006)).  
25 Notwithstanding this "absolute right," contracting parties may agree to permit early repayment of  
26 the loan. In exchange, the contract may provide for a "make-whole premium," which "serve[s]  
27 to memorialize the rule of perfect tender by essentially agreeing ahead of time upon a cost of  
28 prepayment." *U.S. Bank*, 2012 WL 273119 at \*4.

1 Make-whole early redemption premiums also alleviate the noteholders' interest-rate risk.  
2 If not for make-wholes, noteholders would bear the risk that the issuers would refinance the notes  
3 when interest rates are lower, forcing the noteholders to acquire new notes at now lower rates.  
4 *See, e.g., In re Premier Entm't Biloxi LLC*, 445 B.R. 582, 641 (Bankr. S.D. Miss. 2010) (quoting  
5 Am. Bar Foundation Corp. Debt. Fin. Project, *Commentaries on Model Debenture Indenture*  
6 *Provisions* 475 (1971)). Make-whole premiums therefore ensure that both sides are held to their  
7 bargain.

8 Here, the Noteholders are entitled to allowed claims for the Optional Redemption  
9 Premiums under the Proposed Plans. The Debtors are obligated to pay the Optional Redemption  
10 Premiums so long as (1) the Noteholders are entitled to the premiums under applicable non-  
11 bankruptcy (state) law, and (2) the Bankruptcy Code does not expressly disallow such claims.  
12 *See Travelers Cas. & Sur. Co. of Am. v. Pac. Gas & Elec. Co.*, 549 U.S. 443, 452 (2007) (claims  
13 enforceable under non-bankruptcy law are allowable in bankruptcy unless the Bankruptcy Code  
14 expressly disallows them); *see also, e.g., In re Imperial Coronado Partners, Ltd.* ("Imperial  
15 Coronado"), 96 B.R. 997, 999–1000 (B.A.P. 9th Cir. 1989) (claims for prepayment premium are  
16 enforceable in bankruptcy); *In re Chemtura Corp.*, 439 B.R. at 600 (analyzing allowability of  
17 make-whole provision under state and bankruptcy law).

18 The conditions for the Noteholders' entitlement to Optional Redemption Premiums are  
19 satisfied here. **First**, applicable state law requires payment of the optional redemption premiums.  
20 Under the plain meaning of the Note Documents, a premium is owed when the Debtors engage in  
21 an "optional" (*i.e.*, voluntary) "redemption." The Debtor Plan's treatment of all of the Senior  
22 Notes and the Alternative Plan's treatment of the Short Term Notes are both optional redemptions.  
23 **Second**, no provision of the Bankruptcy Code disallows optional redemption premiums.  
24 Therefore, and especially in light of the Debtors' assumed solvency, *see EFH*, 842 F.3d at 253  
25 n.1, no basis exists for denying Optional Redemption Premiums. The Noteholders are therefore  
26 entitled to an order declaring that, to the extent the Senior Notes are satisfied prior to the dates  
27 specified in the applicable Note Documents, absent the payment of these premiums, their claims  
28 are impaired, and they are entitled to vote on the Proposed Plans.

1 **I. The Noteholders Are Entitled to Optional Redemption Premiums, Under**  
2 **Applicable Non-Bankruptcy Law, If the Debtors Elect to Discharge the Senior**  
3 **Notes Pursuant to the Debtor Plan.**

4 As a threshold matter, courts in both New York<sup>13</sup> and California<sup>14</sup> enforce optional  
5 redemption provisions, like those at issue here. Courts enforce optional redemption provisions  
6 according to their plain terms, “giving effect to the intent of the parties as revealed by the language  
7 in their agreement[s].” *EFH*, 842 F.3d at 256 (quoting *Chesapeake Energy Corp. v. Bank of N.Y.*  
8 *Mellon Tr. Co.*, 773 F.3d 110, 113 (2d Cir. 2014)) (interpreting New York law); *see also, e.g.*,  
9 *Wells Fargo Bank, N.A. v. Cabazon Band of Mission Indians* (“*Cabazon*”), No. E060447, 2016  
10 WL 3438920, at \*7 (Cal. Ct. App. June 15, 2016) (same under California law). The Optional  
11 Redemption Provisions allow the Debtors, at their option, to redeem the Senior Notes at a  
12 specified redemption price. *Supra* p. 6. The Optional Redemption Premiums are therefore  
13 triggered if there is an (1) “optional,” (2) “redemption.” *See, e.g.*, *EFH*, 842 F.3d 254–55.

14 Any attempt by the Debtors to cancel or refinance the Senior Notes prior to the dates upon  
15 which they may be repaid or the stated maturity under the Note Documents, constitutes an  
16 “optional” “redemption” entitling the Noteholders to Optional Redemption Premiums. *See id.*;  
17 *Imperial Coronado*, 96 B.R. 999–1000.

18 **A. The Debtors’ Choice to Satisfy the Senior Notes Pursuant to the Debtor Plan**  
19 **is “Optional.”**

20 The Debtors’ decision to satisfy the Senior Notes prior to the dates specified in the Note  
21 Documents is “optional,” even when that choice is made after their bankruptcy filing. *See*  
22 *Imperial Coronado*, 96 B.R. 999–1000; *EFH*, 842 F.3d at 255. The Debtors have the wherewithal  
23 to pay the Optional Redemption Premiums that are due in the event that the Noteholders are paid  
24 early. Alternatively, the Debtors can choose to reinstate the Senior Notes and leave their

---

25 <sup>13</sup> Pursuant to New York law, prepayment or optional redemption provisions are typically treated as liquidated  
26 damages clauses, and are presumptively enforceable. *See, e.g.*, *In re Vanderveer Estates Holdings, Inc.*, 283 B.R.  
27 122, 130 (Bankr. E.D.N.Y. 2002) (“finding that the Yield Maintenance Premium provision is an enforceable liquidated  
28 damages clause under New York law.”); *see also In re S. Side House, LLC*, 451 B.R. 248, 268 (Bankr. E.D.N.Y.  
2011); *In re Chemtura Corp.*, 439 B.R. at 601-02.

<sup>14</sup> Pursuant to California law, “contractual charges for prepayment of the loan principal are generally considered valid  
provisions for alternative performance, rather than penalties or liquidated damages for breach.” *Ridgley v. Topa Thrift*  
& *Loan Ass’n*, 17 Cal. 4th 970, 978 (1998).

1 obligations thereunder intact after the Debtor Plan’s proposed effective date. To the extent that  
2 the Debtors chose not to reinstate, the redemption of the Senior Notes on the effective date is  
3 clearly “optional.”

4 The Ninth Circuit Bankruptcy Appellate Panel (“BAP”) held in *Imperial Coronado* that a  
5 chapter 11 debtor’s satisfaction of a note that allowed for prepayment at “any time” only if the  
6 debtor paid a make-whole premium, triggered the note’s make-whole provision. 96 B.R. at 999–  
7 1000. There, the BAP considered the allowance of a claim for a make-whole premium that arose  
8 from a prepayment penalty provision in a note secured by the debtor’s apartment building. *Id.* at  
9 998. Before bankruptcy, the debtor defaulted on the note, the note accelerated, and the lender  
10 initiated foreclosure proceedings. *Id.* A month before the scheduled foreclosure sale, the debtor  
11 filed for chapter 11 protection and subsequently sold the building under section 363 of the  
12 Bankruptcy Code, using the proceeds to satisfy the defaulted note. *Id.*

13 The BAP determined that, notwithstanding the note’s acceleration or the pendency of the  
14 bankruptcy case, the satisfaction of the note with the proceeds of the sale prior to the note’s stated  
15 maturity date constituted a prepayment that triggered the make-whole provision. *Id.* at 999-1000.  
16 The debtor’s payment was optional because the debtor “had the right to deaccelerate the due date  
17 of the loan as part of a plan of reorganization . . . [under] 11 U.S.C. § 1124(2).” 96 B.R. at 1000.  
18 That the debtor was insolvent, and could not afford to pay arrearages and reinstate the loan was  
19 immaterial to the BAP’s reasoning: “[T]he question is not whether [the debtor] could, as a  
20 practical matter, afford to exercise its right, but whether it had the right to reinstate the loan.” *Id.*  
21 Therefore the debtor’s “decision . . . to pay off the loan” rather than to “reinstate the loan” was  
22 “voluntary, and the prepayment penalty [was] enforceable.” *Id.*; see also *In re 433 S. Beverly*  
23 *Drive*, 117 B.R. 563, 568–69 (Bankr. C.D. Cal. 1990) (allowing a prepayment premium despite  
24 the borrower’s bankruptcy filing).<sup>15</sup>

25 Similarly, the Third Circuit in *EFH* found the solvent debtor’s refinancing of certain notes  
26 through debtor-in-possession financing to be “optional.” 842 F.3d 255–56. The court rejected

---

27 <sup>15</sup> Abrogated on other grounds by *Gen. Elec. Capital Corp. v. Future Media Prods., Inc.*, 547 F.3d 956 (9th Cir. 2008)  
28 (abrogating *433 S. Beverly Drive*’s decision with respect to postpetition interest).

1 the debtor's argument that the notes' acceleration provision, which rendered the notes "due and  
2 payable immediately without further action or notice," negated the voluntariness of the proposed  
3 redemption; indeed, the debtor "filed for Chapter 11 protection voluntarily." *Id.* at 255.  
4 Additionally, while in bankruptcy the debtor was not forced to repay the notes immediately: it  
5 "had the option . . . to reinstate the accelerated Notes' original maturity date under Bankruptcy  
6 Code § 1124(2) . . . [but] chose not to do so." *Id.* Because the chapter 11 filing was voluntary,  
7 and because the debtor had the choice of different treatment of the notes once in bankruptcy, its  
8 actions were "optional" as a matter of law and therefore triggered the redemption premium  
9 payment under the notes' terms. *See id.*

10 That the debtor in *EFH* was solvent further underscored the voluntary nature of the  
11 redemption. *See id.* "[A] chapter 11 debtor that has the capacity to refinance secured debt on  
12 better terms . . . outside of bankruptcy . . . cannot reasonably assert that its repayment of debt is  
13 not 'voluntary.'" *Id.* (quoting Scott K. Charles & Emil A. Kleinhaus, *Prepayment Clauses in*  
14 *Bankruptcy*, 15 AM. BANKR. INST. L. REV. 537, 552 (2007)).<sup>16</sup> Moreover, the redemption of the  
15 notes was done over the noteholders' objection; there, the noteholders were contractually  
16 permitted to deaccelerate the notes, but they were blocked by the automatic stay from doing so.  
17 *Id.*<sup>17</sup>

18 Here, as in *Imperial Coronado* and *EFH*, the Debtors voluntarily filed for chapter 11  
19 protection. The Utility is not, by virtue of the bankruptcy filing, or sections 9.01(e) and 9.02 of  
20 the Indentures, *required* to redeem the Senior Notes. To the contrary, the Debtors could very well  
21 seek to reinstate the Senior Notes' original maturity dates under 11 U.S.C. § 1124(2) to avoid  
22

---

23 <sup>16</sup> The equities counsel even more strongly in favor of honoring a solvent debtor's contractual obligations such as the  
24 payment of optional redemption premiums in bankruptcy than they do when the debtor is insolvent. *See, e.g., In re*  
25 *Dow Corning Corp.*, 456 F.3d 668, 678–79 (6th Cir. 2006) ("[W]hen a debtor is solvent, it is the role of the bankruptcy  
26 court to enforce the creditors' contractual rights."); *In re Chicago, Milwaukee, St. Paul & Pac. R.R. Co.*, 791 F.2d  
27 524, 528 (7th Cir. 1986) (where debtor is solvent, "the task for the bankruptcy court is simply to enforce creditors'  
28 rights according to the tenor of the contracts that created those rights"); *In re Los Angeles Dodgers LLC*, 465 B.R. 18,  
32–33 (D. Del. 2011) (where debtor is solvent, "the equities strongly favor holding the debtor to his contractual  
obligations so long as those obligations are legally enforceable under applicable non-bankruptcy law").

<sup>17</sup> Because the Third Circuit found that the applicable noteholders were entitled to the make-whole premiums, it did  
not reach the alternative argument that the noteholders would have an allowed claim for damages arising from the  
denial of their bargained-for contractual rights. *EFH*, 842 F.3d at 261 n.4. BOKF and the AHC reserve all rights in  
connection with such argument.

1 triggering the Optional Redemption Provisions. *See Imperial Coronado*, 96 B.R. at 1000; *EFH*,  
2 842 F.3d at 255–56. But they are choosing not to do so.

3 The Debtors here are presumed solvent. *See* Scheduling Order ¶ 9. And, as in *EFH*, the  
4 Debtors are strategically utilizing the chapter 11 process to refinance voluntarily the terms of the  
5 Senior Notes, \$4.4 billion of which were issued in the years after the Butte Fire (including \$2.8  
6 billion issued after the 2017 Fires) and as recently as August 2018. *See EFH*, 842 F.3d at 253  
7 n.1, 255. The Debtor Plan underscores this intent. In it, the Debtors concede their ability to satisfy  
8 the Senior Notes in full, including the Optional Redemption Premiums, but only *if the Court so*  
9 *requires*. *See* Debtor Plan § 4.16(a) (the Plan “shall be modified in a manner to render the  
10 [Noteholders’] Claim Unimpaired”). Under these circumstances, the Debtors must be held to  
11 honor the contractual bargain struck as recently as *last year* to pay the Optional Redemption  
12 Premiums where their decision to redeem the Senior Notes is voluntary. *Cf. In re Dow Corning*  
13 *Corp.*, 244 B.R. 678, 695 (Bankr. E.D. Mich. 1999) (“A debtor with the financial wherewithal to  
14 honor its contractual commitments should be required to do so.”).

15 **B. The Debtors’ Choice to Satisfy the Senior Notes Under the Debtor Plan**  
16 **Constitutes a “Redemption” Entitling Noteholders to the Optional**  
**Redemption Premium.**

17 The Debtors’ decision to satisfy the Senior Notes prior to the Senior Notes’ stated  
18 maturity, in addition to being “optional,” also constitutes a “redemption.” *See, e.g., EFH*, 842  
19 F.3d at 254–55. Any satisfaction of the Senior Notes that is consistent with the Optional  
20 Redemption Provisions constitutes a “redemption” under the Note Documents’ plain terms. And  
21 the fact of the Debtors’ bankruptcy filing does not destroy the Noteholders’ rights under the  
22 Optional Redemption Provisions: “redemption” can, as a matter of law, occur before or after a  
23 bankruptcy-triggered acceleration.

24 **1. The Proposed Plans’ Treatment of the Senior Notes Constitutes a**  
25 **“Redemption” Under The Note Documents’ Plain Terms.**

26 The Debtors’ satisfaction of the Senior Notes prior to stated maturity under either of the  
27 Proposed Plans is a “redemption” under the Note Documents’ plain terms. Under both New York  
28 and California law, which govern the Note Documents, the interpretation of indentures is a matter



1 of basic contract law. *See, e.g., EFH*, 842 F.3d at 256 (applying New York contract interpretation  
2 principles to determine the validity of an optional redemption premium provision); *Cabazon*, 2016  
3 WL 3438920, at \*6–7 (same, applying California law). The primary objective in contract  
4 interpretation is to “give effect to the intent of the parties as revealed by the language in their  
5 agreement.” *Compagnie Financiere de CIC et de L’Union Europeenne v. Merrill Lynch, Pierce,*  
6 *Fenner & Smith Inc.*, 232 F.3d 153, 157 (2d Cir. 2000); *see also EFH*, 842 F.3d at 261 (same)  
7 (quoting *Chesapeake Energy Corp. v. Bank of N.Y. Mellon Tr. Co.*, 773 F.3d 110, 113 (2d Cir.  
8 2014)); *Perez-Encinas v. AmerUs Life Ins. Co.*, 468 F. Supp. 2d 1127, 1133 (N.D. Cal. 2006)  
9 (same); Cal. Civ. Code § 1636 (same). “[T]he words and phrases [in a contract] should be given  
10 their plain meaning, and the contract should be construed so as to give full meaning and effect to  
11 all of its provisions.” *Olin Corp. v. Am. Home Assurance Co.*, 704 F.3d 89, 99 (2d Cir. 2012)  
12 (internal quotations omitted; second alteration in original); *see also* Cal. Civ. Code §§ 1639, 1641.

13 The Note Documents do not define the term “redemption,” so this Court must construe  
14 this term in accordance with its plain meaning. *See, e.g., Quadrant Structured v. Vertin*, 16 N.E.  
15 3d 1165, 1171–72 (N.Y. 2014); Cal. Civ. Code § 1644. “In ordinary corporate parlance, a  
16 ‘redemption’ refers to a corporation’s contractual right to compel holders of a certain class of  
17 securities . . . to return or exchange them for cash or property on a date specified in the investment  
18 contract or otherwise determined by the corporation.” *Heine v. Signal Cos.*, No. 74 Civ. 3036,  
19 1977 WL 930, at \*14 (S.D.N.Y. Mar. 4, 1977). Thus, a redemption occurs where “a corporation  
20 redeems certain outstanding bonds or notes for the purpose of cancelling them” and “satisfying  
21 [its] indebtedness.” *See Felin v. Kyle*, 102 F.2d 349, 350 (3d Cir. 1939); *see also Chesapeake*  
22 *Energy*, 957 F. Supp. 2d at 335 n.15 (defining “redemption” as “[t]he reacquisition of a security  
23 by the issuer”).

24 Applying the plain meaning of “redemption” and the basic rules of contract construction,  
25 the Optional Redemption Provisions provide that all of the Senior Notes—the Fixed Date Notes,  
26 Any Time Notes, and the 2034 Notes—may be redeemed prior to the dates specified in the  
27 applicable Note Documents only if the Debtors pay the Optional Redemption Premiums. This  
28 point is crystal clear with respect to 28 of the 29 series of Senior Notes (the Fixed Date Notes and

1 the Any Time Notes), but it applies equally with respect to the 2034 Notes.

2 a. ***Fixed Date Notes***

3 The Fixed Date Notes contain virtually indistinguishable Optional Redemption Provisions  
4 to those the Third Circuit validated in *EFH*. 842 F.3d at 254 (“At any time prior to December 1,  
5 2015, the Issuer may redeem all or a part of the Notes at a redemption price . . .”). As in *EFH*,  
6 the Fixed Date Optional Redemption Provisions provide that “***at any time prior to the [Fixed***  
7 ***Date Variable]***, the [Senior Notes] are redeemable at the option of the Company in whole or in  
8 part at a redemption price equal to” the Optional Redemption Premium formula. *See, e.g.*, 18th  
9 Supp. Indenture § 401(a) (emphasis added).<sup>18</sup>

10 In sum, any attempt by the Debtors to satisfy the Fixed Date Notes prior to the applicable  
11 Fixed Date Variable constitutes a “redemption” that, under the express terms of the Note  
12 Documents, triggers the Optional Redemption Premium. *See id.*; *see also EFH*, 842 F.3d at 254–  
13 56.<sup>19</sup>

14 b. ***Any Time Notes***

15 The Noteholders’ entitlement to the Optional Redemption Premiums is just as clear with  
16 respect to the Any Time Notes, which require premium payments if redeemed at any time—even  
17 one day—prior to stated maturity. The Debtors’ satisfaction of the Any Time Notes prior to the  
18 stated specified maturity dates also constitutes a redemption under the applicable Note  
19 Documents’ plain terms.

20 Any Time Notes “are redeemable at the option of the Company in whole or in part *at any*  
21 *time,*” subject to the Optional Redemption Premium. *See, e.g.*, 1st Supp. Indenture § 301  
22 (emphasis added).<sup>20</sup> As noted, the 2005 Indenture supplies redemption procedures to be followed

23 <sup>18</sup> The 18th Supp. Indenture includes a Fixed Date Variable of May 15, 2022. The Note Documents applicable to the  
24 remaining Fixed Date Notes contain substantively identical terms, with different Fixed Date and Basis Point Variables.  
*See, e.g.*, 19th Supp. Indenture §§ 401-02; *see also* Senior Notes Schedule (identifying each Fixed Date Notes’ variable  
25 terms).

26 <sup>19</sup> The Fixed Date Notes can also be redeemed *after* the Fixed Date Variable, *see, e.g.*, 18th Supp. Indenture § 401(b),  
27 but before the date of Stated Maturity (which generally occurs three or six months after the Fixed Date Variable), *see,*  
*e.g.*, Indentures § 6.01 & Art. VI (providing procedures to be followed when the Company redeems bonds prior to  
28 their “Stated Maturity”). In those instances, the Debtors owe no Optional Redemption Premiums. *See e.g.*, 18th Supp.  
Indenture § 401(b).

<sup>20</sup> The language in the 1st through 8th Supp. Indentures—under which the Any Time Notes were issued—are



1 if the Debtors redeem the Senior Notes prior to the date of “Stated Maturity.” 2005 Indenture §  
2 6.01 & Art. VI. Accordingly, any attempt by the Debtors to satisfy the Any Time Notes prior to  
3 their date of “Stated Maturity” constitutes a “redemption” under the applicable Note Documents.

4 c. **2034 Notes**

5 Finally, satisfaction of the 2034 Notes prior to the date of their stated maturity also  
6 constitutes a “redemption” pursuant to the rules of contract construction of governing California  
7 law.<sup>21</sup> The 2034 Notes Optional Redemption Provision deviates from the Any Time Optional  
8 Redemption Provision in only one material way: it replaces “**are redeemable . . . at any time**”  
9 with “**are redeemable . . . at any time after the Initial Issuance Date and prior to Maturity[.]**”  
10 2005 Indenture § 4.03(d). This provision, if read literally, would lead to an absurd result and  
11 render the Optional Redemption Provisions a nullity; therefore, “Maturity” must be reconciled  
12 with the intent of the contract as a whole to mean “Stated Maturity.”

13 An indenture’s “literal language . . . does not control if it leads to absurdity (Civ. Code,  
14 § 1638) or if it is wholly inconsistent with the main intention of the parties (Civ. Code, § 1653).”  
15 *SDC/Pullman Partners v. Tolo Inc.*, 70 Cal. Rptr. 2d 62, 67 (Cal. Ct. App. 1997) (citations in  
16 original); *see also, e.g., Roden v. AmerisourceBergen Corp.*, 113 Cal. Rptr. 3d 20, 46 (Cal. Ct.  
17 App. 2010) (finding an absurd outcome where the plaintiff’s interpretation of a provision in the  
18 contract would result in an \$8.25 billion windfall contrary to the purpose of the contract).

19 Interpretations that render contract provisions superfluous should likewise be avoided.  
20 *See* Cal. Civ. Code § 1641; *see also, e.g., Crosby v. HLC Properties, Ltd.*, 167 Cal. Rptr. 3d 354,  
21 359–60 (Cal. App. 2014). Further, “contract terms cannot be read in isolation” and “must be read  
22 as a consistent whole, so that some effect will be given to all clauses consistent with the general  
23 intent and purpose of the instrument[.]” *SDC/Pullman*, 70 Cal. Rptr. 2d at 67 (*citing* Cal. Civ.  
24 Code §§ 1641, 1652).

25 Requiring redemption to occur “prior to Maturity,” as opposed to “prior to Stated  
26

27 substantively identical. California law applies to the Any Time Notes, which were all issued under the 2005 Indenture.  
28 *See* 2005 Indenture § 1.12; *see also* Senior Notes Schedule (identifying the Any Time Notes’ Supp. 2005 Indentures  
and Optional Redemption Provisions).

<sup>21</sup> The 2005 Indenture (and therefore California law) governs the 2034 Notes. *See* Senior Note Schedule.

1 Maturity,” renders the 2034 Notes Optional Redemption Provision superfluous. “Maturity” is  
2 defined in the Indentures as “the date on which the principal of such Bond . . . becomes due and  
3 payable . . . whether at Stated Maturity, by declaration of acceleration, upon call for redemption  
4 or otherwise.” Indentures § 1.01. Upon a “call for redemption,” the Utility is to give at least  
5 forty-five (45) days’ notice of the “Redemption Date,” *see* Indentures § 6.02, *i.e.*, the date the  
6 principal becomes due and payable. *See* Indentures §§ 1.01, 6.05. Therefore, upon a “call for  
7 redemption,” the “Redemption Date” becomes the Maturity Date. As a consequence, redemptions  
8 *can never occur “prior to Maturity,”* but only *at or after* Maturity, by definition. The provision  
9 of the 2034 Notes Optional Redemption Provision seeming to require redemption “prior to  
10 Maturity”, therefore, renders the entire Optional Redemption Provision meaningless. That absurd  
11 result runs contrary to the parties’ intent to condition early redemption on the payment of the  
12 Optional Redemption Premium. That result also leads to an unjust windfall to the Debtors of  
13 nearly \$1.6 billion in Optional Redemption Premium owed on the 2034 Senior Notes.

14 By contrast, reading the 2034 Optional Redemption Provision to require redemption prior  
15 to “Stated Maturity”—a date fixed by that term’s definition in the Indenture— gives effect to the  
16 provision consistent with the 2005 Indenture as a whole. The 2005 Indenture contemplates that  
17 redemption will occur prior to *Stated Maturity* (not *Maturity*) by providing procedures for the  
18 Debtors to redeem the 2034 Notes before their “Stated Maturity.” *See* 2005 Indenture § 6.01.  
19 Likewise, section 9.05 of the 2005 Indenture contemplates that the Trustee will file bankruptcy  
20 proofs of claim that include premiums. Were the 2034 Notes’ Optional Redemption Provision to  
21 preclude Optional Redemption Premiums in the event of a bankruptcy, this right to include  
22 premiums in proofs of claim would also be superfluous. The proposed reading of “Maturity” to  
23 mean “Stated Maturity” in the 2005 Indenture is likewise consistent with the bargain embodied  
24 in optional redemption provisions generally and the role make-whole premiums play in leveling  
25 the interest-rate risk between issuers and noteholders. *See supra* pp. 10–11. The Debtors’ ability  
26 to trigger “Maturity” by declaring bankruptcy and evade the bargain they struck with the Any  
27 Time Noteholders—who agreed to lend the Debtors \$2.7 billion in principal capital for  
28 approximately 30 years at fixed rates of interest—would entirely undermine the purpose of the

1 Optional Redemption Provisions and the Note Documents as a whole.

2 In sum, the only permissible interpretation, under these circumstances, is to read the 2034  
3 Notes Optional Redemption Provision in harmony with the definition of Maturity and other  
4 provisions of the 2005 Indenture contemplating redemption after Maturity but before Stated  
5 Maturity. *See* 2005 Indenture §§ 1.01, 4.03(d), 6.01 & Art. VI.

6 \* \* \*

7 In sum, an attempt by the solvent Debtors to satisfy the Senior Notes prior to the applicable  
8 fixed dates or the dates of stated maturity constitutes an “optional” “redemption,” entitling the  
9 Noteholders to Optional Redemption Premiums.

10 **2. Redemption Can Occur After a Bankruptcy-Induced Acceleration as**  
11 **a Matter of Law.**

12 The acceleration of debt under a separate and independent contractual provision in the  
13 Note Documents does not alter the conclusion that the Optional Redemption Provisions are  
14 triggered in this case. This is because a redemption can occur, according to “New York and  
15 federal courts,” “both pre- and post-maturity” of the debt. *EFH*, 842 F.3d at 255; *see also*  
16 *Treasurer of N.J. v. U.S. Dep’t of Treasury*, 684 F.3d 382, 388 (3d Cir. 2012) (noting that  
17 regulations allow bondholders to “present . . . long-matured savings bond[s] for redemption”);  
18 *Fed. Nat. Mortg. Ass’n v. Miller*, 473 N.Y.S.2d 743, 744 (N.Y. Sup. Ct. 1984)) (declaring that  
19 “debtor may redeem” mortgage by “pay[ing] . . . accelerated debt”); *Carman v. Alvord*, 644 P.2d  
20 192, 196 (Cal. 1982) (because indebtedness includes “obligations which are yet to become due as  
21 [well as] those which are already matured,” the timing of a repayment does not affect its  
22 characterization as a “redemption”).

23 A redemption can occur before or after acceleration of the debt caused by a bankruptcy  
24 filing. The Ninth Circuit BAP in *Imperial Coronado* expressly recognized a secured creditor’s  
25 contractual right to a prepayment premium following acceleration of the debt and the debtor’s  
26 bankruptcy filing. 96 B.R. 999–1000. And the Third Circuit in *EFH* held enforceable an optional  
27 redemption provision triggered by the debtors’ satisfaction of the debt, despite the fact that the  
28 notes in question accelerated when the debtors filed for bankruptcy. 842 F.3d at 252, 254–56.

1 This result makes sense: “if automatic acceleration of a debt defeats” an optional redemption  
2 clause, “such a clause could never be enforced in a bankruptcy case,” and a debtor could “always  
3 avoid the effect of a prepayment premium clause by filing a bankruptcy case.” *In re Skyler Ridge*,  
4 80 B.R. 500, 507 (Bankr. C.D. Cal. 1987).

5 In *EFH*, the court rejected the debtor’s argument that the applicable indentures’  
6 acceleration provision—which stated that “all outstanding Notes shall be due and payable  
7 immediately” upon a bankruptcy filing—foreclosed the noteholders’ entitlement to optional  
8 redemption premiums owed if the debtors satisfied the notes “[a]t any time prior to December 15,  
9 2015.” *Id.* at 254 (quoting Indentures §§ 3.07, 6.02). The debtor there argued that the court  
10 should limit “redemption” to mean “only repayments of debt that pre-date the debt’s maturity”  
11 upon bankruptcy. *Id.* at 254–55. To the contrary, the Third Circuit stated, “redemption . . .  
12 include[s] both pre- and post-maturity repayments of a debt.” *Id.* at 255 (citing, *e.g.*, *Chesapeake*  
13 *Energy Corp. v. Bank of N.Y. Mellon*, 773 F.3d 110, 116 (2d Cir. 2014) (“redeem” is to “repay[]  
14 . . . a debt security . . . at or before maturity” (alterations in original))).

15 The presence of a discrete and separate acceleration provision in an indenture does not  
16 negate an otherwise triggered optional redemption provision; “the two sections simply address  
17 different things.” *EFH*, 842 F.3d at 255. While acceleration provisions do advance maturity, they  
18 do not provide a basis for reading other provisions out of an agreement. *See NML Capital v.*  
19 *Republic of Arg.*, 952 N.E.2d 482, 487, 492 (N.Y. 2011) (rejecting the debtor’s argument that  
20 acceleration terminates the obligation to make interest payments because there is no rule that  
21 “terms of a contract not necessarily impacted by acceleration . . . automatically cease to be  
22 enforceable after acceleration.”). In *NML Capital*, the New York Court of Appeals held that had  
23 the debtor intended that other provisions, such as the interest payment provision, become  
24 ineffective upon acceleration or maturity, “it could easily have clarified that intent in any number  
25 of ways.” *Id.* at 490.

26 Applying *NML Capital*, the Third Circuit in *EFH* likewise refused to “choose between”  
27 the redemption provision and the acceleration provision and, instead, read them as operating  
28 together, based on the same logic that acceleration did not void the debtor’s interest payment. The

1 Third Circuit explained that any contrary position would render other provisions superfluous. *See*  
2 842 F.3d at 257; *see also In re Chemtura Corp.*, 439 B.R. at 601, 603 (bankruptcy acceleration  
3 did not negate make-whole provision tied to a fixed maturity date).

4 *EFH* speaks directly to the current case. The Indentures governing 24 of the 29 series of  
5 the Senior Notes (the Fixed Date Notes), worth an aggregate \$11.85 billion, state that the Senior  
6 Notes are redeemable at the option of the Debtors at any time prior to specific dates. For example,  
7 the 3.75% Senior Notes due 2024 are optionally redeemable until November 15, 2023. *See* 21st  
8 Supplement to the 2005 Indenture Art. IV Section 401 (February 21, 2014). Moreover, the  
9 acceleration provision does not state that the Noteholders forfeit their right to the premium  
10 otherwise provided for in the contract upon a bankruptcy event of default.<sup>22</sup> Thus, for the same  
11 reasons as in *EFH*, acceleration of the maturity of the Fixed Date Notes is not pertinent to the  
12 triggering of the Optional Redemption Premium. *See* 842 F.3d at 257 (“[T]he result is the same  
13 no matter the Indenture—there were optional redemptions before a date certain, thereby triggering  
14 make-whole premiums.”). The same is true of four other series of Senior Notes (the Any Time  
15 Notes) that give the Debtors the option to redeem “at any time,” subject to the payment of the  
16 Optional Redemption Premium. *See In re Imperial Coronado*, 96 B.R. at 999 (awarding make-  
17 whole despite acceleration based on provision involving “prepay[ment] . . . in full or in part at  
18 any time”).

19 The acceleration clause also has no contractual effect on the entitlement to a make-whole  
20 with respect to the 2034 Notes. Just as in *NML Capital* and *EFH*, nothing in the Optional  
21 Redemption Provisions or any other provision of the Note Documents indicates that the parties  
22 intended for acceleration to supersede any other provision. *See EFH*, 842 F.3d at 257 (“It  
23 surpasses strange to hold that silence in [the acceleration provision] supersedes [the optional  
24 redemption provisions’] simple script.”). To the contrary, the Note Documents make clear that

---

25 <sup>22</sup> The omission of a reference to any “premium” concerning certain bankruptcy related events of default does not  
26 evince an intent to deny such premium in bankruptcy. Indeed, section 9.05 of the Indentures expressly permits the  
27 Trustee to include “premium, if any” among the amounts asserted in bankruptcy proofs of claim; a right that would  
28 be superfluous were premiums denied in bankruptcy. In fact, the omission of “premium” in connection with automatic  
acceleration in bankruptcy makes practical sense. It is not certain at the outset of a bankruptcy case whether the  
Debtors would elect to cash out or reinstate the Senior Notes and thus, in most circumstances, no Optional Redemption  
Premium is triggered immediately on the filing of the petition.

1 section 9.02 and article VI in the Indentures and the Optional Redemption Provisions, and the  
2 concepts of “acceleration” (one remedy) and “redemption” (a separate remedy), are not mutually  
3 exclusive, but rather are explicitly permissive and cumulative. *See* Indentures § 9.10 (“every right  
4 and remedy shall . . . be cumulative and in addition to every other right and remedy given  
5 hereunder”); *EFH*, 842 F.3d at 259 (“The takeaway for us is that [the optional redemption  
6 provision] applies no less following acceleration of the Notes’ maturity than it would to a pre-  
7 acceleration redemption.”). Under these circumstances, as in *Imperial Coronado*, *NML*, and *EFH*,  
8 an automatic acceleration caused by a bankruptcy filing does not negate the remedies provided in  
9 the Optional Redemption Provisions.

10 There are still other reasons why acceleration of the debt does not obviate the debtor’s  
11 obligation to pay a make-whole premium. Most fundamentally, key provisions of the Indentures  
12 would be rendered nonsensical or superfluous under the Debtors’ assumed interpretation. The  
13 Trustee, as noted, is empowered to file a bankruptcy claim for the Optional Redemption Premium.  
14 2005 Indenture § 9.05. The Indentures also state that “notwithstanding any other provision in  
15 [the] Indenture, the Holder of any Bond shall have the right, which is *absolute and unconditional*,  
16 to receive payment of . . . premium, if any.” *See, e.g.*, 2018 Indenture Art. IX § 9.08  
17 (“Unconditional Right of Holders to Receive Principal, Premium, and Interest”) (August 6, 2018)  
18 (emphasis added). Those provisions would be meaningless if the acceleration clause defeated the  
19 express provisions requiring the Debtors to pay a make-whole premium.

20 Under New York and California law, courts interpreting contracts have a duty “to give  
21 full meaning and effect to all of [an] Indenture’s provisions.” *EFH*, 842 F.3d at 256; *see also*  
22 *Balsam v. Tucows Inc.*, 627 F.3d 1158, 1162 (9th Cir. 2010) (“The whole of a contract is to be  
23 taken together, so as to give effect to every part”). The correct interpretation of the Indenture is  
24 that an acceleration clause that is silent as to premium leaves all other provisions intact; any other  
25 interpretation would read key terms out of the contract. If a debtor wishes to disclaim the  
26 obligation to pay a premium upon a bankruptcy filing, it can plainly provide for that contingency.  
27 The Debtors here did not do so, and they owe the Optional Redemption Premium as a result.

28 What is more, the Debtors themselves, and not the lenders, are prompting the acceleration

1 and refraining from de-acceleration on their own volition. “[S]o long as the lender refrains from  
2 taking overt action, any acceleration triggered by bankruptcy will not defeat the right to a  
3 prepayment premium.” *Premier Entm’t Biloxi LLC v. U.S. Bank Nat’l Assoc. (In re Premier*  
4 *Entm’t Biloxi LLC)*, 445 B.R. 582, 631 (Bankr. S. D. Miss. 2010) (citing *In re LHD Realty Corp.*,  
5 726 F.2d 327, 332 (7th Cir. 1984)). Therefore, the Noteholders’ right to make-whole premiums  
6 is unaffected by the acceleration clause.

7                   **3. The Second Circuit’s *Momentive* Decision Does Not Counsel a**  
8                   **Contrary Result.**

9                   The Debtors will presumably rely on the Second Circuit’s decision in *Matter of MPM*  
10 *Silicones, L.L.C. (“Momentive”)*, 874 F.3d 787 (2d Cir. 2017) to argue that the Optional  
11 Redemption Provisions cannot be triggered following a bankruptcy. However, *Momentive* is  
12 contrary to Ninth Circuit BAP precedent, see *Imperial Coronado*, 96 B.R. 999–1000 (post-  
13 bankruptcy satisfaction of note constituted optional prepayment), and runs contrary to the New  
14 York state law upon which it relies. See *EFH*, 874 F.3d at 257, 259–60 (rejecting reasoning from  
15 *Momentive* lower court opinions as contrary to New York law).

16                   In *Momentive*, the Second Circuit rejected noteholders’ contention that their optional  
17 redemption premiums were triggered when the debtor issued replacement notes under chapter 11,  
18 thereby redeeming the notes “at its option” prior to the notes’ stated, fixed-date maturity terms.  
19 874 F.3d at 802. At the outset, *Momentive* has no impact on the make-whole analysis for the  
20 Fixed Date or Any Time Notes. The relevant indentures in *Momentive* “called for the recovery  
21 of a ‘make-whole’ premium if [the debtor] opted to redeem the notes prior to maturity.” *Id.* at  
22 792. Though the indentures mentioned the date October 15, 2020, this date simply happened to  
23 be the indentures’ “maturity date,” *id.*, unlike the dates specified in the Fixed Date Notes at issue  
24 here. For the Fixed Date or Any Time Notes, the Debtors owe a make-whole premium upon  
25 optional redemption either prior to a fixed date or at “any time.” The analysis in *Momentive* is  
26 therefore inapposite to the large majority of Senior Notes and only relevant, if at all, with respect  
27 to the 2034 Notes.

28                   In any event, with respect to all of the Senior Notes, *Momentive* is also distinguishable



1 and precluded by the “Intentional Evasion” doctrine. In *Momentive*, the debtors were not solvent;  
2 they were “substantially overleveraged” and “faced serious financial problems” prior to their  
3 chapter 11 filings. 874 F.3d at 791; *see also In re MPM Silicones, LLC*, No. 14-22503-RDD,  
4 2014 WL 4436335, at \*17 (Bankr. S.D.N.Y. Sept. 9, 2014). In *EFH*, by contrast, the debtors were  
5 solvent—a factor *EFH* explicitly noted was potentially relevant to its analysis. *See* 842 F.3d at  
6 253 n.1. As in *EFH*, the Debtors here are presumed to be solvent. Prior to filing for bankruptcy,  
7 the Debtors had not yet defaulted on any of the Senior Notes. And they have acknowledged their  
8 financial capacity to modify the Debtor Plan so that the Noteholders are unimpaired if the Court  
9 determines that Optional Redemption Premiums are owed. *See* Debtor Plan § 4.16(a).

10 In light of the Debtors’ asserted solvency, they are precluded from using bankruptcy to  
11 evade their obligation to pay the Optional Redemption Premiums. Courts recognize that it is  
12 fundamentally inequitable to allow a borrower to evade payment of a premium by causing the  
13 default, regardless of whether the borrower had subjective intent to evade payment, because  
14 allowing such evasion would “place [the borrower] in a better position by breaching the  
15 [agreement] than it would have occupied had it honored the parties’ contract.” *See Wilmington*  
16 *Sav. Fund Soc., FSB v. Cash America Int’l, Inc.*, No. 15-cv-5027 (JMF), 2016 WL 5092594, at  
17 \*6–8 (S.D.N.Y. Sept. 19, 2016); *see also Nw. Mut. Life Ins. Co.*, 816 N.Y.S.2d at 839 (borrowers  
18 should not be allowed “to intentionally trigger acceleration in order to secure the benefits of  
19 prepayment in a favorable market while at the same time avoiding the bargained for premium”).

20 Under this “intentional evasion” rule, a borrower cannot default to trigger acceleration and  
21 “evade” associated premiums. *See In re 1141 Realty Owner LLC*, 598 B.R. 534, 541 (Bankr.  
22 S.D.N.Y. 2019). The *Momentive* bankruptcy court acknowledged the intentional evasion rule,<sup>23</sup>  
23 before declaring it undisputedly factually inapplicable under the circumstances present in that  
24 case. *Id.* But the Debtors here, as noted, differ from the *Momentive* debtors, particularly in that  
25 they are solvent and have affirmed the ability to make the Optional Redemption Premiums (or

---

26  
27 <sup>23</sup> *In re MPM Silicones, LLC*, No. 14-22503-RDD, 2014 WL 4436335, at \*13 (Bankr. S.D.N.Y. Sept. 9, 2014), *aff’d*  
28 in part, 874 F.3d 787 (2d Cir. 2017) (“when the debtor intentionally defaults in order to trigger acceleration and evade  
the prepayment premium or make-whole, the debtor will remain liable for the make-whole notwithstanding  
acceleration of the debt”).



1 otherwise modify the Debtor Plan). Thus, the Debtors should not inappropriately use these  
2 chapter 11 cases as an opportunity to enhance equity holders' position by choosing to redeem the  
3 Senior Notes without paying the bargained for Optional Redemption Premiums.

4 In addition to being inapposite and distinguishable, *Momentive* is wrong. In that case, the  
5 Second Circuit relied on a single decision, *In re AMR Corp*, 730 F.3d 88 (2d Cir. 2013), in holding  
6 that "a payment made mandatory by operation of an automatic acceleration clause is not one made  
7 at MPM's option." *MPM Silicones*, 874 F.3d at 802–03. But *AMR*'s acceleration provision  
8 *explicitly disclaimed* the availability of the make-whole amounts otherwise due under the note if  
9 the issuer voluntarily filed for bankruptcy. 730 F.3d at 99 (following voluntary bankruptcy filing,  
10 acceleration provision provided "unpaid principal amount of the [notes] . . . [plus] accrued but  
11 unpaid interest thereon and all other amounts due thereunder (*but for the avoidance of doubt,*  
12 *without Make-Whole Amount*), shall be immediately due" (emphasis added)). The plain text of  
13 the applicable provision in *AMR* expressly disclaimed the availability of make-whole premiums  
14 following a bankruptcy-triggered acceleration; thus "*AMR* is the easy case; just follow the text."  
15 *EFH*, 842 F.3d at 256. The same is not true here.

16 As in *EFH*, the Note Documents' plain language (i) provides procedures for the Senior  
17 Notes to be "redeemable before their Stated Maturity" (*see* Indentures § 6.01), and (ii) permits  
18 the accrual of Optional Redemption Premiums prior to either fixed dates or stated maturity  
19 irrespective of any bankruptcy default or accelerations. The Debtors could have chosen to cut off  
20 Optional Redemption Premiums upon filing of a bankruptcy (as was the case in *AMR*); they did  
21 not. *See* Indentures § 9.02 (no mention of Optional Redemption Provisions). The reasoning in  
22 *EFH*, and not *Momentive*, should apply here.

23 In sum, the plain language of the Senior Notes demonstrates that Optional Redemption  
24 Premiums are available, regardless of the Debtors' bankruptcy filing, under applicable state law  
25 should the Debtors satisfy principal and interest due on the Senior Notes prior to the dates  
26 specified in the Note Documents.

## 27 **II. The Optional Redemption Premiums Are Not Disallowed by the Bankruptcy Code**

28 Nor are the Optional Redemption Premiums disallowed by the Bankruptcy Code. The

1 Optional Redemption Premiums are not “interest,” but rather one-time “charges” purposed to  
2 compensate the Noteholders for the additional costs they will incur as a result of the Senior Notes  
3 being satisfied early. Even if the Optional Redemption Premiums are viewed as interest (and they  
4 should not be), they are fully matured and, therefore, not subject to section 502(b)(2) of the  
5 Bankruptcy Code. *See* 11 U.S.C. § 502(b)(2) (disallowing claims for “unmatured interest”).

6 **A. The Optional Redemption Premiums Are “Charges,” or “Liquidated**  
7 **Damages,” Not “Interest.”**

8 It is well-settled in the Ninth Circuit that make-whole premium claims are allowable under  
9 the Bankruptcy Code. *See Imperial Coronado*, 96 B.R. at 106 (finding a make-whole allowable  
10 as a secured claim under section 506(b) of the Bankruptcy Code); *see also In re Read-Rite Corp.*,  
11 No. 03-43576 RN7, 2005 WL 2210659 (Bankr. N.D. Cal. Aug. 11, 2005); *433 S. Beverly Drive*,  
12 117 B.R. at 568 (“Nothing in the [Bankruptcy Code] automatically invalidates a provision for a  
13 Prepayment Premium which is otherwise enforceable under applicable non-bankruptcy  
14 law . . .”).

15 Likewise, the vast majority of courts outside of the Ninth Circuit have held, either  
16 expressly or implicitly (through allowance of a claim), that the Bankruptcy Code does not disallow  
17 make-whole premiums or similar charges. *See, e.g., EFH*, 842 F.3d at 255; *1141 Realty*, 598 B.R.  
18 at 543–44; *In re Trico Marine Servs., Inc.*, 450 B.R. 474, 480 (Bankr. D. Del. 2011) (make-whole  
19 was not subject to disallowance under section 502(b)(2)); *In re Lappin Elec. Co., Inc.*, 245 B.R.  
20 326, 331 (Bankr. E.D. Wis. 2000) (allowing a claim for a termination fee).

21 To be sure, a panel of the Fifth Circuit in *Ultra Petroleum Corp. v. Ad Hoc Comm. of*  
22 *Unsecured Creditors of Ultra Res., Inc. (In re Ultra Petroleum Corp.)*, 913 F.3d 533 (5th Cir.  
23 2019), *withdrawn*, No. 17-20793, 2019 WL 6318074 (5th Cir. Nov. 26, 2019), initially held that  
24 make-whole premiums constitute “unmatured interest” disallowed under 11 U.S.C. § 502(b)(2).  
25 But on rehearing, the same Fifth Circuit panel vacated its initial opinion and jettisoned its  
26 characterization of prepayment premiums as unmatured interest in order to allow the bankruptcy  
27 court to address this issue, as well as the solvent-debtor exception, in the first instance. *See Ultra*  
28 *Petroleum Corp. v. Ad Hoc Comm. of Unsecured Creditors of Ultra Res., Inc. (In re Ultra*

1 *Petroleum Corp.*), No. 17-20793, 2019 WL 6318074, at \*1, 5–6 (5th Cir. Nov. 26, 2019). In  
2 addition, the Fifth Circuit went out of its way to note that its “review of the record reveals no  
3 reason why the solvent-debtor exception could not apply” and expressly instructed the bankruptcy  
4 court to “consider . . . the applicability of the solvent-debtor exception on remand.” *Id.* at \*6.  
5 Conducting that analysis harmonized with “other circuits hav[ing] recognized” that, “absent  
6 compelling equitable considerations, when a debtor is solvent, it is the role of the bankruptcy  
7 court to enforce the creditor’s contractual rights.” *Id.* (quoting *In re Dow Corning*, 456 F.3d 668,  
8 679 (6th Cir. 2006)) (citing *In re Chi., Milwaukee, St. Paul & Pac. R. R. Co.*, 791 F.2d 524, 528  
9 (7th Cir. 1986)); *see supra* p. 14–15 & n.16.

10 The Fifth Circuit was right to abandon its minority view. Courts in the Ninth Circuit,  
11 including the *Imperial Coronado* decision, treat prepayment premium claims as “charges” or  
12 “liquidated damages”—both allowable under the Bankruptcy Code. *See Imperial Coronado*, 96  
13 B.R. at 1000-01; *433 S. Beverly Drive*, 117 B.R. 569; *In re Planvest*, 94 B.R. 644, 645 (Bankr.  
14 D. Ariz. 1988); *Skyler Ridge*, 80 B.R. at 506–07. An overwhelming majority of courts in other  
15 circuits also view make-wholes as charges or liquidated damages and not as unmatured interest.  
16 *See In re School Specialty, Inc.*, No. 13-10125, 2013 Bankr. LEXIS 1897, at \*18 (Bankr. D. Del.  
17 Apr. 22, 2013) (agreeing with majority that make-whole premiums are not unmatured interest);  
18 *Trico Marine Servs.*, 450 B.R. at 480 (stating that “substantial majority of courts considering this  
19 issue have concluded that make-whole or prepayment obligations are in the nature of liquidated  
20 damages rather than unmatured interest”) (internal citations omitted); *Chemtura*, 439 B.R. at 604  
21 (acknowledging “majority view” is that prepayment premium claims are not unmatured interest);  
22 *Noonan v. Fremont Fin. (In re Lappin Elec. Co.)*, 245 B.R. 326, 330 (Bankr. E.D. Wis. 2000)  
23 (agreeing “with a majority of courts that view a prepayment charge as liquidated damages, not as  
24 unmatured interest”).

25 **B. The Optional Redemption Premiums Are Fully Matured, and Cannot**  
26 **Constitute “Unmatured” Interest.**

27 Even if the Optional Redemption Premiums constituted interest (which they do not), they  
28 still would not be disallowed by section 502(b)(2) of the Bankruptcy Code because they are fully

1 “matured.” Courts hold that where optional redemption provisions that are grounded in pre-  
2 petition contracts become due by reason of repayment of debt under a plan, they are not unmatured  
3 interest. *See, e.g., In re 360 Inns, Ltd.*, 76 B.R. 573, 576 (Bankr. N.D. Tex. 1987) (“prepayment  
4 penalty was not unmatured interest as contemplated in § 502(b)(2), inasmuch as the prepayment  
5 penalty was activated and matured once the plan of reorganization proposed to prepay UNUM's  
6 debt”); *In re Outdoor Sports Headquarters*, 161 B.R. 414, 424 (Bankr. S.D. Ohio 1993)  
7 (prepayment premiums fully mature “pursuant to the provisions of a contract”).

8 The Optional Redemption Premiums are rooted in agreements entered into well before the  
9 Petition Date. And the Noteholders have fully performed their side of the bargain by investing in  
10 the Senior Notes, which the Debtors promised not to pay prematurely without the Optional  
11 Redemption Premiums. By filing for bankruptcy, however, the Debtors elected to temporarily  
12 stop making payments under the Note Documents and to make all amounts due thereunder  
13 immediately due and owing. The Debtors could reverse this election by reinstating the Senior  
14 Notes. But in deliberately deciding *not* to reinstate or otherwise unimpaired the Senior Notes, the  
15 Debtors have confirmed that their original bargain with the Noteholders will not be honored,  
16 leaving the Noteholders to liquidate their positions and procure substitute investments. The  
17 parties no doubt have negotiated the Optional Redemption Provisions to compensate the  
18 Noteholders in precisely these circumstances.

19 **C. The Solvent Debtors Must Honor the Note Documents In Any Event**

20 Courts overwhelmingly recognize that a plan of reorganization for a solvent debtor  
21 generally must satisfy all amounts due unimpaired creditors pursuant to any underlying contracts,  
22 even where such amounts may be disallowed in an insolvent debtor case. Even if the Court does  
23 rule that the Optional Redemption Premiums constitute unmatured interest—and they do not—  
24 the presumed-solvent Debtors nevertheless must pay the Optional Redemption Premiums to the  
25 extent required in the relevant agreements.

26 In cases involving solvent debtors, courts have held that creditors are entitled to the full  
27 benefit of their prepetition bargain, as it is “the opposite of equity to allow the debtor to escape  
28 the expressly-bargained-for result of its act.” *Ruskin v. Griffiths*, 269 F.2d 827, 832 (2d Cir.

1 1959); *see also* *UPS Capital Bus. Credit v. Gencarelli (In re Gencarelli)*, 501 F.3d 1, 7 (1st Cir.  
2 2007) (explaining that, in a solvent debtor case, “the equities strongly favor holding the debtor to  
3 his contractual obligations as long as those obligations are legally enforceable under applicable  
4 non-bankruptcy law”); *In re Chi., Milwaukee, St. Paul & Pac. R.R. Co.*, 791 F.2d 524, 528 (7th  
5 Cir. 1986) (“[I]f the bankrupt is solvent the task for the bankruptcy court is simply to enforce  
6 creditors’ rights according to the tenor of the contracts that created those rights. . . .”);  
7 *Debentureholders Protective Comm. of Cont’l Inv. Corp. v. Cont’l Inv. Corp.*, 679 F.2d 264, 268  
8 (1st Cir. 1982) (same); *Johnson v. Norris*, 190 F. 459, 466 (5th Cir. 1911) (“Whether we are  
9 governed by the apparent intention of Congress as shown by the general purpose of the bankruptcy  
10 law, or by the general principles of equity, the result would be the same. The bankrupts should  
11 pay their debts in full, principal and interest to the time of payment, whenever the assets of their  
12 estates are sufficient.”).

13 Indeed, courts have repeatedly held that, in solvent-debtor cases, typical equitable  
14 concerns for the allocation of a debtor’s “limited pie” give way to “the presumption . . . that a  
15 bankruptcy court’s role is merely to enforce the contractual rights of the parties.” *In re Dow*  
16 *Corning*, 456 F.3d at 678–79; *see also In re Chemtura Corp.*, 439 B.R. at 605 (“With a solvent  
17 debtor, issues as to fairness amongst creditors, in sharing a limited pie, no longer apply . . .”). In  
18 *Dow*, the Court of Appeals for the Sixth Circuit considered the plan objections of commercial  
19 creditors of a solvent debtor reorganizing under chapter 11 in order to resolve mass tort claims,  
20 like the Debtors’ situation here. The Sixth Circuit held that “the legislative history of the  
21 Bankruptcy Code makes clear” that when “a solvent debtor seeks confirmation of its plan, . . .  
22 equitable considerations operate differently” than when the debtor is insolvent and require a  
23 presumption in favor of enforcing contracts in accordance with applicable non-bankruptcy law.  
24 *Id.*; *see also In re Los Angeles Dodgers LLC*, 465 B.R. 18, 32–33 (D. Del. 2011) (holding that for  
25 solvent debtors, “the equities strongly favor holding the debtor to his contractual obligations so  
26 long as those obligations are legally enforceable under applicable non-bankruptcy law”).

27 Here, the same principles apply—to the extent the Debtors are solvent, and the Optional  
28 Redemption Premiums are valid and enforceable under applicable law outside of bankruptcy, all

1 such claims must be satisfied under any plan that may be confirmed in these cases. To do  
2 otherwise would be contrary both to the preponderance of precedent and to the longstanding  
3 equitable principles enforcing all of creditors' state law rights against solvent debtors.

#### 4 **STATEMENT OF CREDITORS' COMMITTEE**

5 The Creditors' Committee acts as a fiduciary for a broad constituency of unsecured  
6 creditors' interests, which includes but is not limited to the Noteholders. As a result, the Creditors'  
7 Committee's sole position with respect to the Optional Redemption Premiums is that, to the extent  
8 they are enforceable and payable under applicable non-bankruptcy law, any plan that purports to  
9 render the Noteholders unimpaired must necessarily provide for payment in full of those Optional  
10 Redemption Premiums. The Creditors' Committee takes no position on any other views  
11 expressed herein. Further, if the Debtors' estates prove to be insolvent, the Creditors' Committee  
12 reserves all rights with respect to these issues.

#### 13 **CONCLUSION**

14 Should the Debtors elect to satisfy the Senior Notes prior to the dates including the  
15 maturity dates specified in the Note Documents rather than reinstate them, the Debtors will owe  
16 the Noteholders the Optional Redemption Premiums under the plain language of the Note  
17 Documents and applicable bankruptcy law. That these Debtors, who claim to be solvent, have  
18 sought relief under chapter 11 of the Bankruptcy Code is insufficient, as a matter of law, to avoid  
19 triggering the Optional Redemption Premiums. The Debtors filed for chapter 11 protection to  
20 relieve themselves of massive tort liabilities. But they are attempting to use chapter 11 improperly  
21 to enhance the value of existing equity by (i) capping the maximum amount individual wildfire  
22 victims can receive on account of their tort claims; and (ii) redeeming the Senior Notes  
23 (presumably through refinancing at lower interest rates) without paying the Optional Redemption  
24 Premiums. The Debtors' bankruptcy does not relieve them of their obligations under the Note  
25 Documents—some of which were incurred as little as one year ago, and *after* the first bout of  
26 Wildfires.

27 Accordingly, BOKF and the AHC respectfully request that this Court enter an Order  
28 declaring that (i) the Noteholders are entitled to Optional Redemption Premiums if the Senior

Notes are satisfied and/or cancelled, and (ii) should any plan proponent propose to satisfy principal and interest due on the Senior Notes without paying the Noteholders the Optional Redemption Premiums, the Noteholders will be impaired and entitled to vote to accept or reject any plan incorporating such a proposal.

Dated: November 27, 2019

**ARENT FOX LLP**

By: /s/ Aram Ordubegian  
ARAM ORDUBEGIAN (SBN 185142)  
ANDREW I. SILFEN (*pro hac vice*)  
BETH M. BROWNSTEIN (*pro hac vice*)

*Counsel for BOKF, NA, solely in its capacity as  
Indenture Trustee for the Utility Senior Notes*

**AKIN GUMP STRAUSS HAUER & FELD LLP**

/s/ Ashley Vinson Crawford  
ASHLEY VINSON CRAWFORD  
MICHAEL S. STAMER  
IRA S. DIZENGOFF  
DAVID H. BOTTER  
ABID QURESHI

*Counsel for the Ad Hoc Committee of Senior  
Unsecured Noteholders of Pacific Gas and Electric  
Company*

**MILBANK LLP**

/s/ Thomas R. Kreller  
DENNIS F. DUNNE  
SAMUEL A. KHALIL  
GREGORY A. BRAY  
THOMAS R. KRELLER

*Counsel for the Official Committee of Unsecured  
Creditors*

# EXHIBIT 1



Exhibit 1  
Senior Notes Schedule

				Optional Redemption Provision Category	Long- or Short-Term Notes	Outstanding Principal (\$ millions)		Optional Remption Provision: Section of Initial Issuing Document	Initial Issuance Date	Interest Rate	Stated Maturity Date	Basis Point Variable	Fixed Date Variable (if any)
Senior Notes													
2034 Notes													
1.	6.05% Senior Notes due 2034	2034 Notes	Long-Term	\$3,000	2005 Indenture	2005 Indenture		§ 4.03(d)	3/23/2004 <sup>1</sup>	6.05%	3/1/2034	25	N/A
				2034 Notes Subtotal:	\$3,000								
Any Time Notes													
2.	5.80% Senior Notes due March 1, 2037	Any Time	Long-Term	\$950	2005 Indenture	1st Supp. Indenture		§ 301	3/13/2007	5.80%	3/1/2037	25	N/A
3.	6.35% Senior Notes due February 15, 2038	Any Time	Long-Term	\$400	2005 Indenture	3rd Supp. Indenture		§ 401	3/3/2008	6.35%	2/15/2038	30	N/A
4.	6.25% Senior Notes due March 1, 2039	Any Time	Long-Term	\$550	2005 Indenture	6th Supp. Indenture		§ 301	3/6/2009	6.25%	3/1/2039	40	N/A
5.	5.40% Senior Notes due January 15, 2040	Any Time	Long-Term	\$800	2005 Indenture	8th Supp. Indenture		§ 301	11/18/2009	5.40%	1/15/2040	20	N/A
				Any Time Notes Subtotal:	\$2,700								
Fixed Date Notes													
6.	3.50% Senior Notes due October 1, 2020	Fixed Date	Short-Term	\$800	2005 Indenture	10th Supp. Indenture		§ 301	9/15/2010	3.50%	10/1/2020	15	7/1/2020
7.	4.25% Senior Notes due May 15, 2021	Fixed Date	Short-Term	\$300	2005 Indenture	13th Supp. Indenture		§ 301	5/13/2011	4.25%	5/15/2021	15	2/15/2021
8.	3.25% Senior Notes due September 15, 2021	Fixed Date	Short-Term	\$250	2005 Indenture	14th Supp. Indenture		§ 301	9/12/2011	3.25%	9/15/2021	20	6/15/2021
9.	2.45% Senior Notes due August 15, 2022	Fixed Date	Short-Term	\$400	2005 Indenture	18th Supp. Indenture		§ 401	8/16/2012	2.45%	8/15/2022	15	5/15/2022
10.	4.50% Senior Notes due December 15, 2041	Fixed Date	Long-Term	\$250	2005 Indenture	16th Supp. Indenture		§ 301	12/1/2011	4.50%	12/15/2041	25	6/15/2041
11.	4.45% Senior Notes due April 15, 2042	Fixed Date	Long-Term	\$400	2005 Indenture	17th Supp. Indenture		§ 301	4/16/2012	4.45%	4/15/2042	20	10/15/2041
12.	3.75% Senior Notes due August 15, 2042	Fixed Date	Long-Term	\$350	2005 Indenture	18th Supp. Indenture		§ 402	8/16/2012	3.75%	8/15/2042	20	2/15/2042
13.	3.25% Senior Notes due June 15, 2023	Fixed Date	Long-Term	\$375	2005 Indenture	19th Supp. Indenture		§ 401	6/14/2013	3.25%	6/15/2023	20	3/15/2023
14.	4.60% Senior Notes due June 15, 2043	Fixed Date	Long-Term	\$375	2005 Indenture	19th Supp. Indenture		§ 402	6/14/2013	4.60%	6/15/2043	20	12/15/2042
15.	3.85% Senior Notes due November 15, 2023	Fixed Date	Long-Term	\$300	2005 Indenture	20th Supp. Indenture		§ 401	11/12/2013	3.85%	11/15/2023	20	8/15/2023
16.	5.125% Senior Notes due November 15, 2043	Fixed Date	Long-Term	\$500	2005 Indenture	20th Supp. Indenture		§ 402	11/12/2013	5.125%	11/15/2043	25	5/15/2043
17.	3.75% Senior Notes due February 15, 2024	Fixed Date	Long-Term	\$450	2005 Indenture	21st Supp. Indenture		§ 401	2/21/2014	3.75%	2/15/2024	20	11/15/2023
18.	4.75% Senior Notes due February 15, 2044	Fixed Date	Long-Term	\$675	2005 Indenture	21st Supp. Indenture		§ 402	2/21/2014	4.75%	2/15/2044	20	8/15/2043
19.	3.40% Senior Notes due August 15, 2024	Fixed Date	Long-Term	\$350	2005 Indenture	23rd Supp. Indenture		§ 301	8/18/2014	3.40%	8/15/2024	15	5/15/2024
20.	4.30% Senior Notes due March 15, 2045	Fixed Date	Long-Term	\$600	2005 Indenture	24th Supp. Indenture		§ 301	11/6/2014	4.30%	3/15/2045	20	9/15/2044
21.	3.50% Senior Notes due June 15, 2025	Fixed Date	Long-Term	\$600	2005 Indenture	25th Supp. Indenture		§ 301	6/12/2015	3.50%	6/15/2025	20	3/15/2025
22.	4.25% Senior Notes due March 15, 2046	Fixed Date	Long-Term	\$450	2005 Indenture	26th Supp. Indenture		§ 401	11/5/2015	4.25%	3/15/2046	25	9/15/2045
23.	2.95% Senior Notes due March 1, 2026	Fixed Date	Long-Term	\$600	2005 Indenture	27th Supp. Indenture		§ 301	3/1/2016	2.95%	3/1/2026	20	12/1/2025
24.	4.00% Senior Notes due December 1, 2046	Fixed Date	Long-Term	\$600	2005 Indenture	28th Supp. Indenture		§ 308	12/1/2016	4.00%	12/1/2046	20	6/1/2046
25.	3.30% Senior Notes due March 15, 2027	Fixed Date	Long-Term	\$400	2005 Indenture	29th Supp. Indenture		§ 208	3/10/2017	3.30%	3/15/2027	15	12/15/2026
				2005 Indenture Subtotal:	\$14,725								
26.	3.30% Senior Notes due December 1, 2027	Fixed Date	Long-Term	\$1,150	2017 Indenture	2017 Indenture		Reverse of Note	11/29/2017	3.30%	12/1/2027	15	9/1/2027
27.	3.95% Senior Notes due December 1, 2047	Fixed Date	Long-Term	\$850	2017 Indenture	2017 Indenture		Reverse of Note	11/29/2017	3.95%	12/1/2047	20	6/1/2047
				2017 Indenture Subtotal:	\$2,000								
28.	4.25% Senior Notes due August 1, 2023	Fixed Date	Long-Term	\$500	2018 Indenture	Supp. 2018 Indenture		§ 208	8/6/2018	4.25%	8/1/2023	25	7/1/2023
29.	4.65% Senior Notes due August 1, 2028	Fixed Date	Long-Term	\$300	2018 Indenture	Supp. 2018 Indenture		§ 308	8/6/2018	4.65%	8/1/2028	30	5/1/2028
				2018 Indenture Subtotal:	\$800								
				Fixed Date Notes Subtotal:	\$11,825								

Short-Term Notes Subtotal:	\$1,750
Long-Term Notes Subtotal:	\$15,775
Senior Notes Total:	\$17,525

<sup>1</sup>The 6.05% Senior Notes due 2034 were initially issued under the 2005 Indenture's predecessor document, were continued under the 2005 Indenture and are subject to the 2005 Indenture as if issued thereunder.